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EXPORT TRADING COMPANIES

HEARINGS AND MARKUP
BEFORE THE
COMMITTEE ON FOREIGN AFFAIRS
AND ITS
SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE
HOUSE OF REPRESENTATIVES
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EXPORT TRADING COMPANIES

THURSDAY, MAY 22, 1980

House of Representatives,
Committee on Foreign Affairs,
Subcommittee on International
Economic Policy and Trade,
Washington, D.C.

The subcommittee met at 2:10 p.m. in room 2200, Rayburn House Office Building, Hon. Jonathan B. Bingham (chairman of the subcommittee) presiding.

Mr. Bingham. The Subcommittee on International Economic Policy and Trade will be in order.

The subcommittee meets today to begin a series of hearings on various bills to encourage the formation and operation of export trading companies, export trade associations, and export trade services. The continuing severe U.S. trade deficit, particularly in the manufacturing sector, has prompted a serious review of obstacles and possible new incentives to U.S. export trade. One of the more promising areas seems to be greater use of export trading companies which would have all the expertise and tools at their disposal to take full advantage of U.S. products that are exportable. Such companies already exist, both in the United States and abroad. But they have not developed as fully here as in many other trading nations. It is appropriate. therefore, to consider the possible benefits of expanded trading companies in our economy, and what Government programs or policies might assist in accomplishing that.

I would note that the ranking majority member of the subcommittee. Mr. Bonker of Washington, has been particularly interested in this legislation. He has introduced a bill, H.R. 7230, which, in addition to my own bill, H.R. 5061, is under consideration by the subcommittee. Mr. Bonker had intended to be here today but was asked to accompany the President on his trip to inspect the damage caused by the eruption of Mount St. Helens, which has seriously affected Congressman Bonker's congressional district.

He has prepared an opening statement which, without objection, will be inserted at this point in the record.

[Mr. Bonker's opening statement follows:]

Opening Statement of Hon. Don Bonker, a Representative in Congress From the State of Washington

Mr. Chairman, I want to commend you for moving so swiftly to hold hearings on this important subject. The time has never been better for the Congress to exercise some leadership in the area of promoting exports.

Trade is a round-the-clock, day-in-day-out activity. Never have we begun a decade with the massive trade deficits facing us today. This promises unique challenges and opportunities for American exporters. As the President said recently:

"The 1980's begin to emerge as a time both of challenges and renaissance in the world of international commerce. Increased U.S. exports will mean more jobs for American workers, new markets for American business, more secure income for American farmers, a strengthened American dollar and lower costs for American consumers."

As a trading nation, we need to expand our penetration into foreign markets. In the last 3 years, we have been running the biggest deficits in our history, chiefly because of oil imports. Oil price increases alone added $16.4 billion to the 1979 deficit.

In addition, the U.S. share of world trade has declined steadily. It dropped from 20 percent in 1960 to 17 percent in 1970 to about 14 percent today. Had the market share stayed at the 1970 level of 17 percent, we today would not be faced with a trade deficit.

Unfortunately, there are tens of thousands of American producers who do not export to their fullest potential. Some 98 percent of all companies do not export. A mere 200 companies export 80 percent of our entire trade outside our borders.

Many manufacturers do not export because exporting involves unfamiliar risks and requires specialized knowledge and skills.

Greater efforts to encourage and assist U.S. producers to export directly are desirable, but for most producers the marginal costs of developing fully their export opportunities abroad will prove prohibitive.

Export success depends on intermediaries—middlemen, if you will—who by diversifying trade risks and developing economies of scale in marketing, transportation, financing, and other export trade services, can do the exporting for U.S. producers.

A great variety of enterprises provide export trade services to U.S. producers—freight forwarders, brokers, shippers, jobbers, insurance companies, commercial banks, export management companies, advertising firms, trade lawyers, foreign purchasing agents and others. But most fulfill only one or a few of the many functions required to engage in export trade.

A few American trading companies and trade associations specializing in agricultural commodities or raw materials—such as timber and grain—do exist, but they do little to expand exports of U.S. manufacturers.

U.S. producers have not until recently had access to general purpose trading companies. Such companies now operate in the United States, but only on behalf of Japan, Korea, and Western European countries.

Entities which are owned or subsidized by foreign governments compete directly with private U.S. exporters for shares of the world market.

The free market, in theory, ought to have generated American export trading companies long ago. But the market forces are imperfect, due to Government regulation, the structure of American enterprise, and traditional ways of doing business.

For example, Government regulations exclude U.S. banks from offering most export trading services.

Federal Maritime Commission regulations prevent export traders that take title to goods from receiving commissions for freight brokerage from carriers.

Antitrust uncertainties deter U.S. companies from expanding export trading activities in cooperation with other U.S. producers.

American businessmen by and large are unfamiliar with foreign customs, do not speak foreign languages and are unaware of foreign market opportunities.

The large multinational companies have developed their own export markets—but they do little to assist other potential exporters.

The rapidly growing service-related industries are vital to the well-being of the U.S. economy since they create jobs for 7 out of every 10 Americans, provide 65 percent of the Nation's gross national product and offer the greatest potential for significantly increased industrial trade involving finished products.

In addition, small- and medium-sized businesses in the United States engaged in international transactions would benefit from the development of export trading companies, which would enable them to pool resources and technical expertise and to achieve economies of scale and would otherwise assist them in competing in foreign markets.

Before closing, I must mention the positive effects such legislation will have on my region of the country—the Pacific Northwest.

First of all, Puget Sound ports enjoy a unique advantage in exporting: they are anywhere from a day to a day-and-a-half closer to Pacific Rim countries than any other place on the west coast. This is coupled with the fact that the United States is trading more and more with all Pacific Basin countries. By 1977, U.S. trade with Pacific Basin nations surpassed trade with Europe for the first time. This has prompted Vice President Mondale to remark that the area "is now a larger commercial market for the United States than Western Europe."

One out of six Seattle jobs is dependent on foreign trade. And Washington is the third fastest growing State in the Nation.

But the explosion in foreign trade with the Pacific Rim countries has generated intense competition, not only among Washington and other States on the west coast, but among the United States and other trading countries.

Historically, the United States has been at a disadvantage here. We have not had the sophistication and government support for exports that countries such as Japan have enjoyed for years.

Exports also play a vital role in the Northwest because of the tremendous importance of the forest products industry.

As a country, we are a heavy exporter of raw logs—but our export of finished lumber products is all but negligible. We are not obtaining the full economic benefit of our natural resource. In addition, we continue to import some 30 percent of our finished wood products from Canada, which does not help our balance-of-trade deficit.

All of this makes even less sense at a time when high interest rates have crippled the housing and lumber industries.

The domestic market for finished wood products has vanished as housing starts have plummeted. In Washington State, housing starts are down an estimated 40 percent below last year. The lumber industry is in turn dramatically affected—more than 100 of the 818 sawmills in the 12 Western States have been closed, with another 275 curtailing shifts or making other adjustments. In Washington State, about one-third of the 4,500 plywood workers are unemployed. Many smaller sawmills have been particularly hurt, and may never go back into business.

We in Congress must do what we can to promote export of our finished products, at a time when the domestic market is in trouble. Today, our smaller mills—as well as many other "little" manufacturers—simply do not have the expertise to barter and negotiate effectively with foreign governments. As a result, we are forced to take these markets as we find them, limiting ourselves to the exportation of raw resources, while the foreign governments protect their domestic processing industries at the expense of our own.

Without new legislation to reduce impediments and encourage U.S. trading companies, we will simply fail to realize our export potential as a country.

That is why, Mr. Chairman, I am glad these hearings are beginning today. I am looking forward to hearing from our distinguished colleagues from the Senate side give their perspective on legislation in this area. And I am also pleased to hear from our Nation's financial institutions and other members of the private sector.

Mr. Bingham. Mr. Lagomarsino is a cosponsor of both these bills. Do you have an opening statement?

Mr. Lagomarsino. Well, Mr. Chairman, in order to save time I will only say that I think this is a most important subject, and I hope that we can move expeditiously to produce some kind of legislative package.

Mr. Bingham. Thank you.

In subsequent hearings the subcommittee will hear from additional private witnesses and from the executive branch. Those hearings are scheduled for June 4 and June 10.

Much of the progress that has been made in developing and refining ideas for expanding exports generally, and encouraging export trading companies in particular, is attributable to the fine work of the Senate Committee on Banking, Housing, and Urban Affairs, and particularly to the members and staff of that committee's Subcommittee on International Finance, chaired by the distinguished Senator from Illinois.

We are honored today to have with us a very distinguished panel from the other body, including Senator Stevenson, Senator Heinz, Senator Bentsen, and Senator Danforth.

Welcome, gentlemen, and Senator Stevenson, would you like to lead off?

STATEMENT OF HON. ADLAI E. STEVENSON, U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator STEVENSON. Thank you, Mr. Chairman, and I congratulate you and your colleagues for holding these hearings on a subject that I think is of critical importance to our economy. I am also very pleased to be here with my colleagues from the Senate, all of whom have been intimately and actively involved in this effort from its inception.

I say that about the criticality of this effort because the nations which most aggressively produce and sell in the world are the only nations which sustain economic growth and high levels of employment without inflation, leaving aside the oil surplus countries. The United States is failing on all accounts. The inflation continues, unemployment is rising, the recession is deepening, and by no coincidence, the trade deficit on a manufacturer's basis is running at a rate this year in excess of $40 billion.

No single act of Congress will halt the decline of the competitiveness of the United States in international and domestic markets, but no effort to do so can succeed in this competitive world without efforts to improve the marketing of U.S. goods and services.

And of all the means to enhance the marketing of American goods, services, agricultural commodities, there is none that I have been able to identify that would do more than trading companies. Their effectiveness is proved by other nations. They prove it at our expense. All we propose to do is to remove impediments in the law and give American industry and agriculture the tools of their competitors, and by that I mean trading companies.

The impediments in the laws to which this legislation is addressed are in the antitrust laws. Our colleague from Missouri, Senator Danforth, has been particularly active in that respect, and so I will leave comments on that to him. They are also in the tax laws, and also in the banking laws. Let me conclude with a word about the banking laws.

We have concluded in the course of hearings which stretch back over several years, now, that the participation of banks is critical. Bank participation can greatly enhance the ability of export trading companies to provide the wide range of services that are necessary. With their international offices, their experience in trade financing, their familiarity with domestic producers, their presence, both direct and indirect through correspondent banks, in all parts of the world, all parts of the United States, their expertise, all their resources make them critical, uniquely important to the organization, the management, and the success of trading companies.

We don't suggest that bank participation in export trading companies emulate the models of other nations where they are the dominant influences frequently in trading companies. We certainly aren't suggesting the Japanese model. We are, instead, posing a carefully drawn statutory framework with appropriate regulatory restraints that can provide for bank participation in trading companies without ignoring traditional U.S. concerns over the separation of banking and commerce and with the safety and soundness of the banking system.

There are some 16, I believe, different limits on the degree to which banks and their holding companies can participate in trading companies.

I do urge you to give this measure your most serious consideration and look forward to working with all of you to help assure its enactment in this session of the Congress.

Thank you, Mr. Chairman.

[Senator Stevenson's prepared statement follows:]

PREPARED STATEMENT OF HON. ADLAI E. STEVENSON, U.S. SENATOR FROM THE STATE OF ILLINOIS

Mr. Chairman: These hearings deal with a subject that is of critical importance to our economy—U.S. exports. The merchandise trade deficit jumped to a record $13.5 billion for the first quarter of 1980 underscoring the urgent need for policies to improve U.S. export performance.

No single bill will halt the decline in the competitiveness of U.S. industry in both international and domestic markets. But no effort to enhance the competitiveness of U.S. industry in a competitive world market can succeed without efforts to improve the market of U.S. goods and services.

After more than a year's study of U.S. export policy, the Senate Subcommittee on International Finance issued a report recommending a number of measures to improve U.S. competitiveness abroad. These recommendations included the establishment of export trading companies and the amendment of the Webb-Pomerene Act to clarify the antitrust treatment of U.S. export activity. A bill which incorporates both these recommendations, S. 2718, was reported favorably by the Senate Banking Committee on May 15.

Export trading companies can provide a broad range of export services to U.S. producers, thus linking potential U.S. exporters with overseas markets. Data available from the Department of Commerce and other agencies indicate that up to 20,000 U.S. manufacturers and argricultural producers offer goods and services which could be highly competitive abroad. Yet the small size and inexperience of these firms make the costs and the risks of developing overseas markets prohibitive.

Although a variety of existing enterprises do provide export services to U.S. producers, most fulfill only one or a few of the many functions required in export trade. By contrast, most European countries, as well as Japan and Korea, possess sophisticated, large scale general purpose trading companies which perform the full range of functions for exporters. The success of these companies has contributed significantly to the export earnings of all our major trade competitors. Their success also accounts, to a great extent, for the declining market share of U.S. exports. The formation of export trading companies, by providing similar services to U.S. exporters, will enable small and medium sized firms to penetrate foreign markets.

Bank participation can greatly enhance the ability of export trading companies to provide the wide range of services required. Banks with international offices, experience in trade financing, and familiarity with domestic U.S. producers, possess expertise and resources which are important to the organization and management of trading companies.

Bank participation in export trading companies need not, and should not, emulate the Japanese model. A carefully drawn statutory framework and appropriate regulatory restraints can provide for bank participation in trading companies, without ignoring traditional U.S. concerns over the separation of banking and commerce, and with the safety and soundness of the banking system.

Faced with state-controlled buying agencies, state monopolies, and foreign cartels, U.S. industry has been hard pressed to maintain the competitive edge that once characterized U.S. trade activity. While the formation of export trading companies should prove to be an important step in improving our competitiveness, many other obstacles exist. All too many of them are of our own making.

Legal restraints on joint export activities, for example, act as a serious impediment to improved U.S. export performance. For this reason, I believe that it is imperative that the Webb-Pomerene Act be amended to provide export trading companies and export trade associations with a limited, but specific, immunity from the application of the antitrust laws to specified export trade activities.

I have been greatly encouraged by the positive response to these proposals, both within the Senate and on the part of many of my colleagues in the House. We appreciate the initiative you are taking and we will do our best to see that Senate consideration of these bills is completed promptly.

Mr. BINGHAM. Thank you very much, Senator Stevenson.

Senator Heinz.

STATEMENT OF HON. JOHN HEINZ, U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator HEINZ. Thank you, Mr. Chairman. I would like to join Senator Stevenson in commending you and the members of the subcommittee for taking the initiative on this proposal, and on holding hearings on legislation such as our recently reported bill, S. 2718.

In my view, Mr. Chairman, the first thing to point out about this legislation is that it really does represent some fresh thinking, a new approach to the way we should deal with trade and exports, and in particular, an attempt to cope with rapidly changing economic conditions throughout the world.

Our attitudes about trade and exports have long been conditioned by our historical experience—first our isolation that lasted well into this century; and second our unquestioned technological and industrial preeminence in the postwar era.

Those times have changed, and it is essential that our attitudes change as well. The era of American economic preeminence is gone. It is time for us to adjust to new economic circumstances and reevaluate our position in the international marketplace.

This legislation is the product of considerable hearings, principally in the International Finance Subcommittee, which my colleague Senator Stevenson chairs. In 1978 we held lengthy hearings on export policy and the competitiveness of U.S. exports. In 1979 and 1980 we followed with two sets of hearings specifically on trading company legislation. The results of those hearings were some conclusions about our export problems, what we ought to do about them, and the role of export trading companies specifically.

The conclusions thus posed could be summed up in four fairly brief points. First: There is continuing bad news about our trade balance. Our merchandise trade deficit for the first quarter of 1980 was $13.5 billion. That represents a deficit of more than 40 percent ahead of last year.

Second: It is clear that the progress we make in closing the trade gap will depend on our ability to not just increase current exports, but to reach beyond the traditional American exporters to those businesses which have products and have services that are competitive internationally. In that regard, the enactment and the implementation of the multilateral trade agreements does give us an opportunity that we can ill afford to ignore.

Third: There are thousands of potential entrants into the export market. That was made very clear. They are largely small and medium-sized firms, and for the most part they haven't been too interested in exporting. In many cases they face serious barriers to competing successfully in the international marketplace. Sometimes they simply lack interest or motivation because of historic insularity or perhaps just the prosperity of the domestic market. And until recently, there hasn't been the obvious need to seek sales elsewhere.

But there have also been complexities of language and law and practice associated with doing business abroad, and these have presented major barriers to American businesses, and not just small and medium-sized ones but all of those which lack the resources to overcome them. It goes, perhaps without saying, that successful exporting often necessitates a foreign presence, familiar with local law and custom, as well as skill in dealing with the multiplicity of international service providers, freight forwarders, brokers, insurance companies, purchasing agents, and so forth; and dealing successfully with that array of forces demands making informed choices and having the necessary capital, money, and the know-how to implement those choices.

And finally, our own laws in this country provide obstacles in the form of export disincentives generally, and importantly, restrictions on banks' abilities, as Senator Stevenson alluded to, to provide needed capital to trading companies. There are also, as you will hear in particular from Senator Danforth, serious uncertainties about antitrust enforcement and the implications of such enforcement.

The trading company concept, which our bill is designed to promote, is, we believe, the best answer to this problem at this time. By creating organizations whose major business is foreign trade, particularly exporting, we can put into one place the variety of services needed by would-be exporters, and we can create a cadre of knowledgeable, experienced professional traders who can seek out marketplace opportunities and successfully close deals.

The bill, Mr. Chairman, that we reported from the Banking Committee, provides loans and loan guarantees as well as tax incentives, specifically extension of DISC, to set up and operate trading companies. It would permit bank involvement in, and under limited circumstances, control of such companies which will help, we believe, provide the necessary capital, and I might add, thanks to some yeoman efforts by Senator Danforth, it would amend the Webb-Pomerene Act to clarify the antitrust immunity provided trading companies and Webb-Pomerene associations.

Mr. Chairman, I don't think these changes are terribly, terribly radical. In fact, compared to the Japanese model, they are very modest, and I think they are in keeping with our historic emphasis on the free market. They are, however modest, what we believe to be the absolute minimum necessary to make ourselves competitive in the international marketplace.

It is something of a concern to me that the sixth largest exporter in the United States is not an American company, it is the Mitsui Trading Co., and we would like to see an American trading company get into the top 10 at least.

Thank you, Mr. Chairman.

Mr. BINGHAM. Thank you, Senator Heinz.

Senator Bentsen.

STATEMENT OF HON. LLOYD M. BENTSEN, U.S. SENATOR FROM THE STATE OF TEXAS

Senator BENTSEN. Thank you very much, Mr. Chairman. I am certainly encouraged by the fact that as influential a subcommittee as yours is moving forward with these hearings and directing the attention of the membership of the House to the important issue of export trading companies.

I am very pleased to be here with my colleagues to address this particular issue and to show that there is strong bipartisan support and concern for it.

I took the Joint Economic Committee to the Far East in January for 9 days of hearings. We had total immersion, and no interruptions with rollcalls or constituents back in the offices. We talked about trade; we talked to people that are out there on the cutting edge of the problem. Time and time again they referred to the questions of discriminatory taxes, and you would expect that. But they also kept referring back to the importance of trading companies and how current legislation makes it impossible for us to compete in this area.

You know, for a small businessman or the head of a medium-sized business to go abroad, it generally turns out to be just a vacation. Because he doesn't have the contacts, he doesn't have the ties, he doesn't have the expertise to really do that job. So he goes back and tries to justify to the IRS that what he really was trying to do was to encourage exports and to build some trade.

I believe that with more efficient and effective U.S. trading companies that businessmen will actually have a chance, and I think the medium-sized company can really make some inroads. They would have access to offices abroad, to important contacts abroad. He could see people he is supposed to go see and talk to people he is supposed to talk to. To have the banks involved would be an important contribution.

While we were having hearings in East Asia I recall that in Hong Kong I met representatives of three Texas banks with offices there in Hong Kong, each coming up offering to cash a check or provide some service.

I thought to myself, now, if I was a medium-sized businessman coming over here and I was a customer of that bank back home, they'd be doing everything they could to expand my business, to make me a more valued customer, to make me a more important customer, to encourage my business abroad and my exports abroad. And they would know where to send me. They would have a place for me to make my phone calls. I wouldn't have the problem of trying to support that kind of an operation abroad.

So I think the banks can play a very important role. In addition to that financing is one of the very serious problems facing the small or medium-sized company seeking to export. Banks can and do develop expertise in foreign markets; they know what is feasible, what is a reasonable situation, and what isn't. They get the word back to the bank back in the regional area. All this information and expertise dovetails and makes a major contribution to our export performance.

Now, Chairman Stevenson has done an excellent job in expediting this; Senator Heinz and Senator Danforth have been very interested nd made major contributions in it. I would like to say to you that I elieve we are going to see this legislation expedited in the Senate. We ave scheduled hearings for June in the Finance Committee where here has to be a referral there because of partial jurisdiction on the ax questions, and I would expect a very early decision on the Senate ide. I am here frankly to give my support, to tell you how interested nd concerned I am about the legislation. And I appreciate your makng time for us this afternoon.

[Senator Bentsen's prepared statement follows:]

PREPARED STATEMENT OF HON. LLOYD M. BENTSEN, U.S. SENATOR FROM THE STATE OF TEXAS

Thank you, Chairman Bingham, for the opportunity to testify this afternoon n behalf of legislation that would improve America's export potential by enouraging the formation of more effective U.S. trading companies and clarifying mbiguities in our antitrust laws as they apply to overseas transactions.

The distinguished members of this subcommittee well understand the imporance of trade, the extent and impact of our trade deficits, and what will happen f this country ceases to be competitive in major world markets. I think we can ll agree that this Congress has an obligation to remove, wherever possible and ppropriate, impediments to U.S. exports and make it possible for American business to compete on an equal basis in the international marketplace.

In January of this year I led a delegation from the Joint Economic Committee on a study mission to East Asia where we met with the American business community and local government officials to assess U.S. competitiveness in the world's fastest growing market.

We held 9 days of hearings in East Asia, and I can tell you, Mr. Chairman, that he issue of trading companies was high on the agenda in every country we visited. Our people overseas, who are on the front lines in the battle for world markets, made the point time and again that our export performance would be well served by export trading companies able to perform a wide variety of services to smaller medium size firms. It was emphasized that legislation precluding bank participation in U.S. trading companies places American exporters at a unique disadvantage in world trade, since ready access to competitive financng is frequently a key element in winning markets abroad.

We have asked to testify today in order to emphasize the bipartisan support enjoyed by export trading company legislation, the seriousness with which this ssue is regarded in the Senate, and our determination to work for passage of comprehensive export trading company legislation during this session of Congress.

As a member of the Senate Finance Committee I want to assure you that I am fully prepared to do everything I can to get prompt hearings and hopefully favorable committee action at the earliest possible time on the Senate version of this legislation.

I am certain, Mr. Chairman, that I speak for my colleagues when I say that we look forward to working with you and your subcommittee members in the effort to remove one important restraint on U.S. exports and strengthen the hand of the United States in the very tough, competitive, and important world of trade.

Thank you very much.

Mr. BINGHAM. Thank you very much.

Senator Danforth.

STATEMENT OF HON. JOHN C. DANFORTH, U.S. SENATOR FROM THE STATE OF MISSOURI

Senator DANFORTH. Mr. Chairman, thank you very much, and members of the subcommittee, for having us here and also for moving so expeditiously on what I think is a very important bill.

We really have a chance to do something to improve our position on international trade. I think we have a real chance to pass a bill in the Senate, and I hope in the House as well.

It is clear that with the uncertainty in the economy there is a growing public interest in the question of international trade, and I fear a growing interest in the possibility of protectionism, and I really think that the question that we have to face is how do we handle this. What is America's position going to be in international trade? Are we going to follow the protectionist route? Are we going to, in effect, crawl into a hole and hope that we won't get hurt too badly by the battles going on around us, or are we going to take a more traditional position for our country, and that is to be competitive ourselves and to try to maximize the potential which international trade gives us for economic growth and for economic development.

Traditionally we have followed that route, and very much to our advantage. As a matter of fact, during this century we always had a surplus in trade, a favorable balance of trade, and it was not until 1971 that we began to incur deficits, and it was not until about 3 years ago that those deficits became very, very substantial, and that is what they are now.

Senator Stevenson said maybe a $40 billion deficit this year. That's bad news. I had only thought it was going to be about $30 billion. But that would have been unheard of in the past, anything in that area.

So I think really the question is which way do we go, and for those of us who believe that America does have an interest in international trade, well, let's maximize our potential, not minimize it.

I have read, and I know Senator Bentsen has read and a lot of other people are reading, Ezra Vogel's book "Japan Is Number One." It really should be must reading for everybody who is interested in this area. Ezra Vogel, a professor at Harvard University who has made a study of what Japan is doing that is right, with the idea that perhaps we can learn something from what they are doing.

And one thing that is clear in reading that book is their singlemindness, their willingness to maximize their potential, their ability as a country to work together to take advantage of foreign markets and to take advantage of the skills that they have. There is no reason why we can't, while not following precisely the same blueprint, use basically the same model in the United States of trying to cooperate, and in fact, we tried that back in 1918 when Congress passed the Webb-Pomerene Act, which was designed to provide certain limited exemptions from antitrust laws for American businesses, consortiums of American businesses doing business abroad.

Unfortunately, the Webb-Pomerene Act never really worked very well, and increasingly it has not been working very well, really for a number of reasons. The first is that the Webb-Pomerene Act does not cover services. It only covers the sales of products, the sales of goods, and because we are increasingly in a service-oriented economy, it just doesn't do any good at all with respect to that major part of the economy.

The second thing is that the administration of the Webb-Pomerene Act has not been vested in any agency which has any particular interest in fostering international trade. That is, it is now in the hands of the Federal Trade Commission, whereas the Commerce Department has been given the responsibility for really stimulating and trying to develop international markets.

And the third problem with the Webb-Pomerene Act as it now exists is that there is no real certainty that immunity is going to last. The protection is not real. The protection can be here today and gone tomorrow, and therefore, the continuing uncertainty means that businesses have not really been willing to take advantage of it.

The bill which was reported out of the Senate Banking Committee, and a version of which has been introduced, I understand, on the House side, is designed to correct these three flaws namely, to cover services, to put administration of the bill in the Commerce Department, which is the trade-oriented department of the Federal Government, and to provide for a clearance mechanism so that Webb-Pomerene associations or consortiums of American businesses can have an advance clearance before they begin doing business abroad.

We think these are major steps forward, really major improvements. They are not the be all and end all of international trade, but at least this is the only game in town right now, and therefore, if we are going to be more competitive and I think more aggressive in international trade, I think that this bill is a very important step.

Mr. Bingham. Thank you very much.

We have a vote, but I think if we proceed quickly we can perhaps finish with this distinguished panel.

BANK CONTROL

Let me ask if in your view it is essential to the bill that banks be allowed to have a controlling interest?

Senator Stevenson. Mr. Chairman, we have tried to deal with that issue by permitting the banks controlling interest only with the approval of the appropriate regulatory agency. My own feeling is that in many instances it will be important, and that the soundness of the banks will require control as opposed to minority interest in trading companies controlled by others without the experience of the bankers; and also that to actively involve bankers uniquely situated to get these trading companies going, they are going to need that incentive, not only to control but to profit from a controlling interest in that trading company. So we balance the importance of bank participation with our concern for the soundness of banks by leaving the degree of participation beyond if any control to the regulatory agency.

Senator Heinz. Mr. Chairman, let me add just two things to what Senator Stevenson said. Banks have a network of correspondents, for he most part, internationally, that are or could be used operationally o achieve many of the purposes that are now contemplated but that an't realistically be achieved by small- and medium-sized businesses. A network, in other words.

The second point is that in our hearings it is clear that one cannot ind, for the most part, adequate financing of inventories which are bviously essential for a trading company to operate. So just in terms f the practicalities, you would need somebody with money involved. nd that, of course, is a definition of a bank.

Mr. Bingham. Well, as I understand it, your bill would prohibit a ank from favoring a trading company in which it has an interest in the granting of loans. That being the case, what is the benefit to the trading company if the bank is inhibited to that degree?

Senator HEINZ. The benefit is making money.

Mr. BINGHAM. And you don't think that that is a real problem. I understand that foreign banks do favor their trading companies in granting loans.

Senator STEVENSON. This is more or less of a boilerplate, and I think a sound prohibition against deals that are less than arm's length, and it is for the benefit of the stockholders and the depositors in the banks. But still, through the active participation of banks in trading companies, the resources of all banks—and by resources, I mean not just money but the human resources, the expertise of those banks—is going to be brought in contact with the exporters here, and as Senator Bentsen, I think, very eloquently pointed out, with the representatives of American companies abroad. But we don't want any—we are trying to avoid any collusive or cozy, less than arm's length dealings, and I think that is right.

Mr. BINGHAM. Mr. Lagomarsino.

Mr. LAGOMARSINO. Thank you, Mr. Chairman.

I want to say I very much agree with the testimony that we have heard from this distinguished panel, and I think it should be clear to all of us—I don't know whether it is, but it should be clear to all of us, all Americans, for that matter—that the route to go is by expanding our exports, not by curtailing our imports; we are not trying to solve the whole problem that way.

So I think that this legislation, no matter what the details are going to be when we are finally finished deliberating on it, really is kind of unique. In one way we are getting the Government more into the business, and in the other we are getting it out, where Government is part of the problem, and I think that is what we are going to have to do more of, to really take a look at each issue, each specific issue that we are dealing with, and decide what is the proper role of us as a government to play, and not just apply these boilerplates across the countryside, to end up maybe doing some good, but in more cases, probably doing a lot of harm.

So I think this makes a lot of sense. I hope we can live with it.

I might say that, Senator Bentsen, we followed you around a little bit in the Far East and heard good reports on your mission.

Senator BENTSEN. Thank you very much.

Mr. LAGOMARSINO. I might say that I did miss you at the Interparliamentary Union in Mexico this year. We appreciate your good work in the past, and we hope that that can come to pass again.

Senator BENTSEN. Thank you.

Mr. BINGHAM. I am afraid we will have to suspend now unless Mr. Pease has a quick question.

We want to thank you very much for your help and your testimony.

Senator STEVENSON. Thank you.

[Whereupon, a brief recess was taken.]

Mr. BINGHAM. The subcommittee will resume its session.

We will hear next from our former colleague, the distinguished gentleman from California, now attorney at law in the District, Hon. Thomas M. Rees.

We are glad to have you with us, Tom, and you may proceed in any way that you see fit.

STATEMENT OF HON. THOMAS M. REES, ATTORNEY AT LAW

Mr. REES. Thank you very much, Mr. Chairman.

I do not have a written statement. I have been a bit overly tied up this week and sometimes I find that written statements tend to inhibit witnesses, and I wanted to be uninhibited when I appeared before your subcommittee.

I very much appreciate your taking the leadership in working in this very complex area of import-export trade, and the concept of the export trading company.

I used to be an exporter. I started my own business, Compeniendo Pacifico, in Los Angeles quite a few years ago, and exported farm machinery and parts into Mexico, and I have a feeling for it. I love the field or I wouldn't have gone into it. When I was a member of the State legislature, with my friend Bob Lagomarsino, I was active in the field and created the Southern California World Trade Authority. When I was in Congress, as you know, I was the chairman of the equivalent subcommittee of the Banking Committee, which is the International Trade, Investment and Monetary Policy Subcommittee. As a solo practitioner in Washington, much of my emphasis has been in the international area. It is an area I love, it is an area I believe in. And I think the initiative you have taken is the most important, and I feel significant initiative that has been taken for several years in Congress. Unfortunately, Congress tends to react negatively when it comes to international trade. And as a result, we find that our laws today are disincentives to international trade. There are not too many incentives around.

By giving the ball to the private sector, I think that this bill is going the right way. So much of the time the administration will come up with a great trade reorganization plan and create five new assistant secretaries in the Department of Commerce. I don't think that is going to create new exports. But giving the incentive to the private sector and to the individual entrepreneur in the form of an export trading company is going to create markets.

EXPORTS BY SMALL BUSINESS

I was appointed by the President about a year and a half ago to chair a task force on small business and international trade. It was part of the President's White House Conference on Small Business, and they had their major meeting here in Washington last January. The task force that I had was composed of around, oh, I think 12 members. About seven or eight members were very active and the rest we never saw. All of the members of the task force were small business people, with the exception of our banker, and they operated their own companies. Most of them were brokers, traders, in that type of service area in export. All of them had their own company. One worked for the Massachusetts Port Authority and supervised their very successful Massport program, which is, I think, the best program in the country of any of the governmental agencies aimed at stimulating exports.

The material that I distributed to you is not testimony. They are excerpts from the President's White House Conference, and the recommendations as to where we should go. I think it is very significant that the No. 1 recommendation, voted on by the thousands of delegates, dealt with export trading companies. Usually you think that people come to a conference like that and they say, well, we want to balance the budget but we also want a big appropriation for the Small Business Administration or something like that. Here, however, they voted to get the Government to come in and make it possible that export trading companies could be created, so that these companies could service small and medium-sized business.

The definition of small business, for our task force purpose, was any company that was less than the Fortune 1000. So it would be a company with annual sales of less than $100 million a year. We were looking at what I considered to be the most dynamic slice of American enterprise. We are not talking about mom and pop shops. We are talking about substantial businesses. If you look at the new businesses that are opening up, say, on the road to Rockville here, or up in the Boston area, or in southern California, Orange County or Silicon Valley up in Santa Clara County, you would find that most of these very dramatic, high technology firms would be covered by our definition of what small business is, anything less than $100 million a year in sales. We find when we look at the statistics that most of the exports from the United States are by major companies. We do have trading companies, and we have some of the best trading companies in the world, but they are specialists. Continental Grain, for example, is a trading company, and the four or five trading companies we have—Cargill is another one—I don't think can be touched in terms of dealing with their specific mission.

There is another one that I have a great deal of admiration for, Englehart Industries, which is in New York City, and they specialize specifically in minerals. They are also going to be specializing in drilling for oil in Northern Canada, but they are great traders. They are the best you could find.

But when it comes to a general trading house that represents a large scope of business, and that medium slice of business that I am talking about, we are very, very thin. We do not have any general trading companies like, say, the East Asia Co. of Denmark, or, say, Mitsubishi of Japan. We don't have trading companies like this. We don't have companies that have the economy of scale that is so necessary if one is effectively going to sell goods abroad and effectively represent those U.S. businesses that are doing business abroad.

I would like to give to you for the record a copy of our option paper. We came up with around 40 different recommendations. We went through all the various disincentives, and we made recommendations on incentives. We certainly covered this legislation that is before you now. The paper deals with DISC, export trading companies, the Webb-Pomerene Act, and quite a few other issues.

Also, I have already given you the final statement of the White House Conference on Small Business.[1]

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[1] The option paper on International Trade, prepared for the White House Conference on Small Business, and the excerpts concerning international trade, from the report to the President by the White House Conference on Small Business, are retained in subcommittee files.

Our task force, composed of small business people that had been
ngaged in international trade all of their lives, really felt that the
asic problem was economy of scale. One of them had an export trad-
ng company in Los Angeles by the name of Anglo-American Avia-
ion. I think it has total yearly sales of around $10 million a year, and
hat is substantial. It represents a 30-year commitment by the owner
f that company. But $10 million compared to a major export trad-
ng company is nothing. He specializes in airplane parts, and he spe-
ializes primarily in Pacific basin countries. And he is considered to
e a very competent and a very successful exporter.

The problem is, though, that the financing is thin. If he gets more
han, say, 1½ to 1 on his debt equity ratio, the bankers close the door.
Ie can't turn his deals around. He can't get the velocity that is neces-
ary for an export trading company.

I have found as an exporter that my margins were about 5 or 6 or
percent. They are very thin margins. If you talk to a major export
ading company—well, for instance, I was talking to a Mitsubishi
presentative yesterday, and he mentioned 5 percent as a margin.
Vell, that is a very thin margin. If anything unforeseen happens, you
se it right away. But when you have huge volume—in the millions—
nd when the margin on one deal brings you into another deal and you
et into the complexities of barter and running your exchanges
rough a half dozen countries, something you can do with economy
f scale, then that 5 percent adds up. If you have 10 deals, that's 50
ercent, and that is the dollar they are making work. It works a lot
arder than our dollars, and the key to this has been the ability to
fectively finance exports, to have a relationship with a banking
ouse that is very close, where the banking house really understands
hat the export trading company is doing.

BANKS IN INTERNATIONAL TRADE

In 1978, the Congress passed the International Banking Act. The
rpose of the act—and this was an act I worked a great deal on during
y last year in Congress—was to develop a regulatory framework for
reign banks doing business in the United States. Prior to that, the
ly international banking done on the retail basis, or on a subsidiary
sis, was by foreign banks that became State bank subsidiaries. We
ve quite a few in California, for example. There is no Federal struc-
re so a foreign bank could become part of the Federal system, and
hat this did was to recognize the dual banking system. It set up a
ructure for a national system of foreign banks doing business in the
nited States.

There was very strong language in the act itself, and if you are
oking for congressional intent, it is very clear in congressional intent
terms of what the feeling of the Banking Committee was at that
ne in dealing with banking and international trade. It says that:

> The Congress hereby declares it is the purpose of this section to provide for the
> ablishment of international banking and financial corporations operating under
> deral supervision * * * to enable them to compete effectively with similar
> eign-owned institutions in the United States and abroad: to afford to the U.S.
> porter and importer in particular, and the U.S. commerce, industry, and agri-

culture in general, at all times a means of financing international trade, especially U.S. exports; * * *

I won't go into the balance of it, but this is the statute. It is not report language, it is statute, and this is congressional intent on the purpose of the International Banking Act.

And I would like also to have that section made a part of the record.[1]

Congressional intent to broaden the scope of domestic banks in international trade is not something that has not been dealt with for 60 or 70 years. There are some statements made in the report of the Senate that this is a complete departure. Why, no one ever heard of having export trading companies wholly or partially owned by banks, but I think you have some good congressional intent there.

The problem is that banks are restricted. A domestic bank can have what is called an Edge Act corporation. An Edge Act corporation is an export financing, international financing subsidiary, and an Edge Act corporation can branch around the country. I would say that your big banks in—there must be at least 10 of your major banks in New York that have at least five Edge Act corporations that are scattered throughout the country. Some are in Miami, Dallas, San Francisco, Los Angeles, and Chicago. They appear to be regular banks, but they don't do domestic business and they don't take any deposits. The purpose, basically, of an Edge Act corporation is to facilitate international trade, but they are restricted because they are banks.

There is an interesting thing in the Edge Act. It does not say that a bank, that an Edge Act corporation has to be a subsidiary of a bank, and I would suspect that if you interpret that law narrowly, that you could say that other kinds of companies could become Edge Acts with the approval of the Federal Reserve. Well, all Edge Act corporations now are subsidiaries of banks.

We also have the restrictions of the bank holding company. Under the law, all foreign banks that come into the United States have to become bank holding companies because the bank from abroad is holding an asset, which is the subsidiary bank they have in the United States. This is if they have a domestic subsidiary.

Also, the bank holding company restricts what a bank can do. What the bank does has to be functionally related to the business of banking, and I would suspect some of the most controversial decisions the Fed has to make are on whether a function of a bank is functionally related to a bank. If a bank has a subsidiary that deals with computer software, is this functionally related? If the banks decide to have a subsidiary for a courier service, to pick up checks, is that functionally related? It is a big battle because the people that are already in the business don't want the banks in it, and the banks would like to get into the business. So it is a very well defined, ambiguous type of statute that was put in there by the House Banking and Currency Committee.

I would like to give you for the record a decision of the Federal Reserve Board in 1974.[2] The reason I want you to read this is because it bears very directly on the legislation that is before you. This was an application of Lloyds Bank Limited, the British Bank, to purchase First Western, which was a rather large bank in

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[1] The International Banking Act of 1978 is retained in subcommittee files.

[2] The Federal Reserve Board's decisions of January 9, 1974, is retained in subcommittee files.

California, I am not quite sure, but that might have been spun off by the Bank Holding Company Act. I think World Airways owned a bank and had to spin it off because the airline was not functionally related to the bank. And so Lloyds decided to buy the bank. The problem was that it was a full blown international bank; they had a lot of export subsidiaries. Let me read this paragraph to give you the idea of the type of structure related to a foreign bank, Lloyds Bank of London, England. They wanted permission to retain indirectly all the voting shares of Balfar, Williamson, Inc., New York City, and to retain indirectly approximately 46 percent of the voting shares of Export Credit and Marketing Corp., New York City, and all of ECM's wholly owned subsidiaries, Export Credit Corp., New York City, Bank America Corp., New York City, and Great America Corp., New York, and this is the decision that went through the Bank Holding Company Act and said you can keep those subsidiaries that are directly involved in financing, but you have to divest yourself of the subsidiaries that are dealing with trade. But it gives you an idea of what we are competing against in this country. We are competing against Lloyds, and the British exporter has the benefit of Lloyds Bank, and the British exporter has the benefit of a worldwide system of sales and a worldwide system of representation that Tom Rees, who had a small little export company, Compeniendo Pacifico, didn't have and probably never could have.

This is why I think this legislation is so important, because it expands the scope of essentially a small export company, and could give them international scope in terms of dealing with complex world markets.

It would be tremendous to have the availability, say, of Chase Manhattan or Bank of America overseas structure in trying to find out how to penetrate the market, what are the restrictions for that market, what are the import restrictions on the market, any letter of credit problems, what is the financing, what is the credit of the person who wants to buy. An export trading company can do that, and in my discussion with the gentleman from the Japanese trading company yesterday, he said of course it helps. They had a very complex deal with the Soviet Union, and they were able to put it together very easily because they didn't have to send their salesmen to Moscow because they were already there. When you deal with the socialist bloc countries, the bureaucracy is so bad that a small businessman wanting to make a sale who thinks he might be able to spend 3 days in Moscow, 1 day in Prague and another day in Warsaw finds that to make those appointments he might have to be there for 6 months or take three or four trips. When you have the economy of scale, your person is there. So if this guy wants to delay you for 5 weeks, your guy is still there.

I could go very specifically into this legislation, and I'll go from the back, because I want to give you some idea as to the problems.

DISC

Most exporters would like to have a DISC. A DISC defers half of your income, and it is good. You like deferral. You can keep your money there; you don't have to pay taxes on it. It is very difficult when every time you have a transaction, you bring our money back, and wham, 40 percent, do another transaction, bring our money back, another 40 percent. If you can keep it and defer it, it helps a lot.

The administration doesn't like DISC. The tax reformers don't like DISC. The IRS doesn't like DISC, and because of it, the statute is extremely complex. I think it is very draconian in parts. And the rules and regulations written by the IRS are almost impossible to deal with. I am dealing on a couple of DISC problems now, and it gets very expensive because of the complexity.

I have met small businessmen—I met one a few weeks ago who paid $17,000 in fees to take care of a $15,000 problem in his DISC. Now, they did restructure the DISC so that he could adjust a little better down the line, so he wouldn't get into the problem he got into on the $15,000.

I was in San Jose, in Santa Clara County, a few weeks ago. I was talking with Arthur Young & Associates, an accounting firm, and they said most of our smaller people do not use a DISC because of the problems. Your assets have to be export receipts, 35 percent. If you are one-tenth of 1 percent below that, the IRS comes in and says, well, everything you have in your DISC that might have been collecting for 10 years is deemed to be distributed and is liable for a 70-percent maximum tax on unearned income.

Now, this is the problem. A small businessman doesn't go into a DISC. If you have an export trading company, the export trading company is going to have a DISC. It would have enough money to pay all these legal fees and accounting fees, and the DISC could be used to cover the client. And you can see right there you are saving the small businessman just a tremendous amount of money.

Webb-Pomerene is the same. Business people don't use Webb-Pomerene. It is a very arcane act, and they don't use it because someone at Justice might decide that you are bad. It is not so much the Federal Trade Commission, it is that Justice is always looking over the shoulder of the Federal Trade Commission, and they keep thinking about all these terrible things that could happen under Webb-Pomerene. Let me tell you something: Nothing happens under Webb-Pomerene because no one uses it.

And so it is the same here. Our attitude seems to be that if a bank owns an export trading company, it is going to be terrible. Then they are going to own everything. They will buy beauty shops and transit systems and whatever it might be. But we don't know. We are flat on our tail in the export trading business. We are not utilizing that huge sector of American business that I have been discussing. Most of the exports come out of that Fortune 500, and we are not utilizing that tremendous potential for world markets. And I see nothing wrong with a bank having an interest.

Mr. **Bingham**. We had perhaps better break now. We will be back shortly.

[Whereupon, a brief recess was taken.]

Mr. **Bingham**. The subcommittee will resume.

Do you have anything further for us, or are you ready for questions?

EXPORT DISINCENTIVES

Mr. **Rees**. I would like to, Mr. Chairman, if I can, just for a few minutes, dwell on the problem of disincentives.

Now, I don't think that any bill or any piece of legislation gives you the secret key. There is always the hope that if we create a new Department of Health, Education, and Welfare, that we are going to solve all those problems. Well, we certainly didn't.

And in a way, I was a little unhappy with the administration's approach because they felt if we changed the structure in the Department of Commerce, we are going to increase exports. I just don't believe it. I don't think there is a magic key. This country is not international trade minded. The Congress is not international trade minded. American business is not international trade minded because we have always had a huge, multitrillion dollar domestic market. We have a continent that is 3,000 miles wide. We have been very well blessed with natural resources so that international trade has been kind of a side thing, and the basic participation in international trade has been with our large multinational corporations.

And therefore, the average businessman does not look to the international market. It is kind of a surplus line. If you end up with 8,000 cans of hairspray, you try to sell them abroad. The biggest problem I had when I started my business during the Korean war was that I couldn't find products that were needed in Mexico, and I really had to beg and borrow to get goods to export that were needed. But as soon as the recession hit, of course, everyone who was not talking to me when I was trying to buy started calling me up and asking me to lunch and things like that. Well, I told them, when we sneeze, you know, Mexico catches cold in terms of economics.

I look at the way the Export Administration Act has been dealt with. I remember about 6 years ago during a period of shortages they put an embargo on scrap metal, they put an embargo on lumber, and they put an embargo on soybeans, and the Japanese were infuriated because this is what they imported from the United States, and all of a sudden they found that long-term contracts were not being honored. As a result they went out and found alternate markets.

We are finding the same thing this year. As far as I am concerned, I think embargoing wheat was a ridiculous idea because we have now lost a market, and I doubt if we will get that market again for many, many years, because a person who purchases wants to have a constant supply. They want to know that they can buy this year, next year, and the year down the line. Once that supply is interrupted because of some political row, they are going to find an alternate market, and this is what has been happening. The Japanese, I believe, put into cultivation hundreds of thousands of acres of soybeans in Brazil as a reaction to our very unilateral decision.

We have the problem of the Arab boycott. Now, I think the work that your subcommittee did on the Export Administration Act was tremendous work. I really think that you did more to that act to make it a better act than all the Congresses preceding you. But is it also necessary to have rules and regulations promulgated by Treasury dealing with the tax aspect? No, there isn't, and I think that should go.

We have the problem with the Foreign Corrupt Practices Act. Everyone is against foreign corrupt practices. I haven't heard anyone saying they are for foreign corrupt practices. But the act is not a very well written act, it is not well defined, and Justice has not come up with rules and regulations, nor has the SEC.

Now, a businessman wanting to do business in a lesser develope country, especially, is not going to do business in that country b cause of the way the Foreign Corrupt Practices Act might affect him A CEO of a corporation can be hurt because of that, so as you loo at legislation such as this, I think you should be looking——

Mr. **Bingham**. I was afraid you weren't going to get back to it.

Mr. **Rees**. Well, I was about to get back because I saw you wer going to hit the gavel.

Mr. **Bingham**. Well, we do have other witnesses.

Mr. **Rees**. Well, you need to deal, you need to flesh out things suc as DISC and maybe go into some of the other problems of disincen tives, because you need to work on them.

If you have any questions, especially on the more technical aspect of banking, I would certainly be glad to answer them.

Mr. **Bingham**. Well, you realize, of course, that on the subject o major disincentives that one hears about—and I am not saying tha they are not very pertinent, I have certainly heard them from many American businessmen abroad—many of those are not within the jurisdiction of this committee. Most of them are under Ways and Means.

BANK DOMINATION

Let me ask you this. I anticipate that we are going to be hearing from existing trading companies that if we proceed with legislation that allows banks to enter the field, that that will give the banks an unfair advantage and they will proceed to dominate the field.

Would you comment on that?

Mr. **Rees**. It really doesn't frighten me that much because I don't think banks would be that aggressive in an entrepreneurial way. Bankers tend to like to sit up in their big offices and to tell you no on a loan. They are not so aggressive in the marketplace. I look at this as kind of a bank having an interest in an export trading company and developing a relationship with the export trading company that goes beyond just the regular client relationship. With that close understanding they can work together on export transactions, and I don't think American banks really do very well in international trade.

If I were to start an export trading company, I would probably do business with a foreign bank just because I would be getting more. I would be buying more knowledge. I just don't see banks, if this act is passed, going out and buying up every export trading company. I think there would certainly be, under this bill as passed out of the Senate, there are restrictions. You cannot give your subsidiary better terms, and I think that is important. This could be proven in a court case that they did in fact give these terms and your export company was not able to get those terms. I really do think that banks would be bending over backward to make sure that they didn't misuse this, because if they did, there would be an automatic reaction in, I know at least, the Senate Banking Committee.

LITIGATION PROBLEMS

Mr. **Bingham**. That sounds like another area where people might say, well, we could get into trouble down that road. Why should we do it? What is your answer to that? I mean, if they might be getting into litigation on the subject of whether they have given more favorable terms to their subsidiaries, would that inhibit the banks from getting into the field?

Mr. REES. I can't really tell you that because I am not that familiar with case law on existing situations. You have a lot of existing situations where members, officers of a bank are members of the board of directors of a client corporation, and there has always been the problem, does this bank favor the client corporation because of this intertie with directors, and I suspect there is a fair amount of case law to try to define where that conflict of interest starts. I just wouldn't know.

STATE AND LOCAL PARTICIPATION

Mr. BINGHAM. Do you have a view on whether there should be restrictions on participation in and formation of export trading companies by State and local governments, port authorities?

Mr. REES. I think there is a feeling—I know that your own New York Port Authority has been contemplating the purchase of one or two smaller trading companies, and to make it as part of their trading company operation. It gets to be very difficult because the New York Port Authority is a very wealthy public agency and they also don't pay taxes, and it would be very difficult for the competition to be competing against an agency that really owned and controlled the port and had tremendous financial resources. I do see a problem. I don't mind public agencies getting into the field, but it should be done on such a basis that there is a certain amount of equalization of competition.

I might suggest to the chairman that you might look at the Massport program in Massachusetts where they really lead a smaller businessman all the way through his first export transaction. This is a very fascinating program. If they want to get into the business, why don't they do that, because that is very legitimate as a function of government.

Mr. BINGHAM. Thank you.

Let's take a recess again.

[Whereupon, a brief recess was taken.]

Mr. BINGHAM. The subcommittee will resume its session.

Our next panel will be Hon. Michael Samuels, executive director for Third World studies, Center for Strategic and International Studies, Georgetown University; Richard Hoefs, director of international tax policy of Arthur Andersen & Co.; and David A. Hartquist, partner, Collier, Shannon, Rill & Scott.

Mr. HOEFS. Mr. Chairman, I brought one of my partners with me, Gerald Ball, and with your permission, I would like to have him included in the discussion.

Mr. BINGHAM. Ambassador Samuels, why don't you proceed?

STATEMENT OF HON. MICHAEL A. SAMUELS, EXECUTIVE DIRECTOR FOR THIRD WORLD STUDIES, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, GEORGETOWN UNIVERSITY

Ambassador SAMUELS. Thank you, Mr. Chairman.

Let me also thank you for giving me the opportunity to testify this afternoon during your important efforts to examine legislation to permit the creation of trading companies and make certain oth changes in export legislation and behavior, especially under the Webb Pomerene Act.

I appreciate your willingness to accept in lieu of a prepared statement, due to my just concluded international travel, a speech I delivered recently in San Diego entitled "Let's Make Our Exports Competitive" which I understand will be inserted in the record.

Mr. BINGHAM. Without objection it will be.

Ambassador SAMUELS. Concerned about what I felt to be a relative decline in American economic and political capabilities internationally, we at CSIS have spent the last 2 years trying to examine in particular the decline in U.S. export competitiveness. Many of our studies are complete, and I am pleased to be able to share with you today some of our tentative conclusions.

CONCLUSIONS ON EXPORT COMPETITIVENESS

First, economically speaking at least, the world is interdependent. Our relatively open markets are increasingly attracting foreign competitors. Our competitors not only provide a wide array of incentives to aid the exporting of domestically produced products, but do not abide by the same standards that we have imposed upon our own private business community in the interest of freer trade.

We ignore foreign market opportunities at our own peril, both economically and politically. Our studies show that the U.S. market share for manufactured products in the developing world market declined from 28 percent in 1970 to 22 percent in 1978, while our competitors, France, Germany, Italy, and England were able at least to maintain their market shares of 1970; Japan significantly increased its share of the market from 22 percent in 1970 to 26 percent in 1978. We are losing our footing abroad, and something must be done. Expanding exports should be a higher national priority.

Second, the customs of the international marketplace are different from those of our domestic marketplace. Institutional patterns that make sense domestically do not always make sense in international competition with foreign exporters whose governments encourage sufficient flexibility to adapt to the market conditions of the real world.

Third, after decades of self-satisfaction with both the size and rate of growth of our domestic economy, many of our producers, especially small- and medium-sized companies, lack the interest, will and capability by themselves to become involved in a meaningful way in gaining export markets. The creation of new incentives is required to overcome this structural problem.

Fourth, the range of disincentives with which our exporters have been saddled, such as the Foreign Corrupt Practices Act, tax laws harmful to business overseas, human rights policy restrictions, antitrust restrictions and others, often deter small- and medium-sized companies from even trying. Our antitrust laws not only inhibit competition abroad by U.S. companies, but especially through their extraterritorial reach, create international hostility and friction that makes it very difficult to negotiate and to implement further removal of trade restrictions by our competition. There is a need for larger institutional structures that could unfathom these restrictions and disincentives that many companies see as barriers even to involvement in international business in the first place.

Fifth, we have been misled by the passivity indicated by those traditional economists whose confidence in the rectifying capabilities of flexible exchange rates have led and could continue to lead to complacency and an unwillingness to fashion new mechanisms to rectify the clear competitive disadvantages of our institutions.

Sixth, even large companies are finding that certain foreign buyers, nonmarket economies in some developing countries, for example, are not able to pay in currency and must exchange other products of raw materials. Counter trade or barter trade is a system of barter that requires downstream sales of unfamiliar products. It calls for new approaches that remove traditional shackles on corporate cooperation. The Japanese may have created the most efficient system to deal with this situation, and we may not be able to match them. We can, however, create institutions to allow our private sector to compete better with these arrangemens.

Seventh, aiding the expanding of exports could be accomplished through a number of governmental actions. Many of these, however, would require increased Government budget allocations. At a time of belt-tightening, such allocations, especially given OMB's apparent aversion to funding the export sector, may not be forthcoming. Thus, actions that do not require significant allocations but that still will make a difference should be identified. Once identified, they should be actively encouraged, and now. To delay is to short change our own economic well-being.

NEED FOR TRADING COMPANIES

The above background has led me to the conclusion that the creation of trading companies would be an important and wise step. Suffice it to say that the trading company concept is an important one to be sanctioned by law. I fear, however, that among those who may speak out against such a concept will be a Justice Department reluctant to change and unwilling to accept the very basic fact that the international business climate is different from the domestic one.

One of the great things about our system of government, however, is that it is you, the Congress, that makes new laws, even, or in some cases especially, when the executive branch takes an uncreative and short-sighted view.

Let me give you an example of a situation where a trading company is required. There are ever-increasing volumes of nondedicated crude oil available in world markets. For a U.S. oil company, energy imbedded in aluminum ingots is difficult to commercialize, but for a Japanese trading concern which may produce aluminum through one affiliate and refine and market fuel oil through another, the tradeoff is straightforward, and the adjustment can be accommodated within the firm.

One of the major observations of the Congress Joint Economic Committee, after their mission to East Asia earlier this year to study the competitiveness of U.S. exports, was the extent to which other countries use trading companies to their advantage. They noted in particular the involvement of private banks and government backing for the success of these companies. They identified situations where European and Japanese trading companies have had immense plantations, major raw material holdings, captive banks or other assets to permit their expansion and development of a wide network of complementary services.

I would urge this committee to coordinate your activities on this subject with those of the Joint Economic Committee and others interested in this subject such as some of you heard today, Senators Stevenson, Roth, Danforth, for example, and Congressmen AuCoin and LaFalce, to maximize your effect.

BANK PARTICIPATION

Let me address one specific issue that will come before you as you consider this legislation, that is, the issue of the participation of commercial banks. By all means, they should be allowed to participate. To me, arguments sometimes put forward about the need for a separation of banking and commerce and the creation of the possibility of conflicts of interest, are arguments not against their participation, but cautions on the way and extent of their participation. U.S. banks should be encouraged to offer more export services. Present law and practice aids the local branches of foreign banks and hurts especially small- and medium-sized companies that cannot afford the requisite in-house staff.

As I look at the bill before you, or the bills before you, it seems to me that they do not go far enough. I would urge you to bring your bill closer to the Senate's version, S. 2379, the Stevenson-Danforth bill. Even more importantly, let me urge you to act fast on this issue so that it can be passed this year. I know that this is an important bill and it faces some substantive disagreement and some internal House committee rivalries. For these latter to impede progress would be a serious setback to our national interest.

Mr. Chairman, the national political and economic interest justifies and indeed requires an active export policy. Bold steps are called for. Awareness is demanded. The trading company idea captures this need.

I urge this committee to refine the legislation well and promptly so that this Nation's exporters may move one more step toward becoming competitive once more.

It is an important step to break with the legal past that impedes our adjustment to new world realities. The precedent could open the way for other, much-needed steps, to insure a healthy America in the face of increasing uncertainty and more dramatic change.

Thank you, Mr. Chairman.

[The speech to which Ambassador Samuels referred follows:]

Speech Before the Aerospace Industries Association, International Council, Spring 1980 Meeting

LET'S MAKE OUR EXPORTS COMPETITIVE

(By Michael A. Samuels[1])

San Diego is a long way from Washington and from the plants and offices where most of you make your contributions for our Nation's economy. My message this afternoon, however, is that you and Washington—government, business, and labor—are faced with an unprecedented challenge: a need to develop a coherent export policy, in the context of our national economy and the different conditions of the international marketplace. This is a message not just for the aerospace industry, but for all industry.

The United States has a deep and longstanding trade problem. For the predictable future, we will be dependent on imported oil and will be faced with a continuing trade imbalance. Compounding this situation is the absence of a national export mentality, or an economy significantly oriented to exporting. The seriousness of this problem must be understood not just by the normal observers of export and trade policy, the economists and the businessmen, but more importantly by those concerned with the overall economic and political strength of the United States domestically and internationally.

Key to our trade problem is the decline of U.S. export competitiveness. We have a national need to understand that the international business environment is very different from our national business environment. The tight interrelationships between business, government and labor unions that exist in most industrialized nations foment coherence and give our competitors a major competitive advantage in foreign markets. We do not enjoy such arrangements. Instead, suspicion and a lack of cooperation between business and government taint our approach to exporting. Furthermore, the government policies of our competitor countries particularly emphasize the importance of exports. Their aid policies, for example, are often tied with export promotional activities. Ours are certainly far from that. What we need more than anything else is better business and government cooperation to serve national interests and government programs specifically designed to expand exports.

Our export problems are worldwide but are particularly noticeable vis-a-vis the Third World, the fastest growing world market. In the developing countries, other exporters, often for past colonial or linguistic reasons, have natural advantages and have aggressively pursued market opportunities. The deficiencies of U.S. policies and practices are especially clear when viewed in the context of Third World market needs.

The American disadvantage began to dawn on me during a recent period when I served as U.S. Ambassador to Sierra Leone. I often saw my colleagues rom other developed countries (Britain, Germany, and France in this instance) pending much of their time selling their country's products—while I was trying o get votes in the United Nations on issues concerning Puerto Rico, American Samoa and Guam! Something seemed wrong to me about that. Equally, I am oncerned about the fact that many senior business executives who have gone nto public service have tended, once in the Executive Branch, to forget about he importance of exports. Once in government, the bureaucracy, existing laws nd regulations and timidity before Congress seem to take over. The national eed to export becomes secondary or even tertiary.

We at CSIS have just completed a major research project that has identified number of competitive disadvantages. Broadly speaking these fall into three ategories: ways by which laws and government regulations are disincentives o exports; aspects of our economic culture that are inherent liabilities to expand- g exports; and foreign practices that reflect serious competitive challenges.

DISINCENTIVES

Many of the laws and regulations that affect exports were initiated to serve omestic economic, political and ethical needs, often with little regard to their npact on exports. The list is lengthy and includes the following:

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[1] Ambassador Samuels is Executive Director of the Center for Strategic and Inter- ational Studies of Georgetown University in charge of Third World Studies.

Antitrust restrictions.—Current antitrust laws and regulations establish strictions on the size of operations and on communications among companies t inhibit consortium-building, one of the major forms of international busin activity.

Foreign corrupt practices standards.—We have moral concerns about corru practices and rightly so. Nevertheless, our definition of corrupt practices eli nates a high percentage of opportunities that could otherwise be present for especially in Third World markets. We must somehow get our moral standa in line with the real business environment.

The U.S. tax structure.—Our tax structure inhibits rather than promotes acti ties overseas. It is often at least 35 percent more expensive to hire an Americ employee abroad than a foreign employee. Though the foreign employee may as competent as the American, he is less likely to see other American produ and opportunities.

The regulatory environment.—Environmental regulations and health regu tions, for example, unilaterally extend domestic standards into a business wo where others do not have an equivalent interest.

Foreign policy restrictions.—Reactions to specific country behavior, in su areas as human rights, support for international terrorists, invasion of neighbo and insistence on compliance with local or regional boycotts are all useful a often appropriate tools of foreign policy. Each, however, must also be view as another further unilateral export shackle.

OUR ECONOMIC CULTURE AS LIABILITY

Perhaps even more serious than the above disincentives are certain traits American behavior that require serious attention.

A domestic, not an international, outlook.—United States citizens may like travel abroad, but they don't like to live there. With our large market and va resources, we have been largely self-sufficient and self-contained in the past. W can no longer be self-contained, but we are often unwilling to make the com promises that economic interdependence requires.

Language capability.—We have an inferior national interest in foreign la guages. Our school systems do not promote the learning of languages. Conside the fact that while there are large numbers of English-speaking Japanese bus nessmen in the United States there are very few Japanese-speaking America businessmen in Japan. A decreasing percentage of our high school students eve study foreign languages.

Our productivity decline.—The United States ranks sixth among the world' seven major industrial nations: Japan, France, West Germany, Canada, an Italy surpass us. According to a Department of Labor International Index o Labor Productivity, using 1967 as a base year, the output per man-hour increase 26.9 percent in the United States through 1977. Comparatively, the output pe man-hour increased by 106.6 percent in Japan, 71.6 percent in France, 69.6 percen in West Germany, 43.3 percent in Canada, and 62.3 percent in Italy. Moreover, according to the latest Labor Department statistics, U.S. productivity actually declined by 0.4 percent in 1979. Relative productivity decline affects the price and quality of our products, and reflects the true state of our productive sector.

Labor's tendency toward protectionism.—In an internationally interdependent economy, where certain industries are more efficient outside the United States, some industries here may have to be modified to conform to market realities and jobs shifted to more competitive industries. Labor, however, would rather protect these non-competitive jobs, than to expand in areas where the United States has a competitive advantage. Unfortunately, the representatives of unions that benefit from exports have traditionally been outshouted by those who cry for protection from imports. Yet, export expansion is a major vehicle for job creation.

FOREIGN PRACTICES

Not all the competitive problems are a result of action or inaction at home. Many stem from the specific actions of foreign governments—some a result of conscious export policy, and others merely a function of differing economic behavior. The list of these is long, but a short list is indicative:

State-owned companies.—Various forms of socialism in the world have created large numbers of state-owned companies able to sell their products and their services with little concern for profits. This is a competitive liability for our free enterprise system and its private sector.

Trading companies.—Without the hindrance of many of our antitrust laws, many foreign firms operate under the umbrella of a trading company, frequently with the direct support of their government. The Japanese MITI example is the most obvious. Without such a vehicle, our small businesses especially will suffer.

Mixed credits.—Many exports, especially to developing countries, are not exports of products but exports of projects—dams, bridges, roads, fertilizer plants, etc. Project contracts often go not to the company that can best produce the final product, but to the company that has provided advanced preparation and feasibility studies. As such, many countries provide free or subsidized feasibility studies to developing countries, and label such services as "aid." The United States has no way of competing with this. The closest government program, AID's Reimbursable Development Program, is underfunded, underutilized, and badly administered by AID.

HOW CAN WE CHANGE?

You probably want to know what you can do about this problem. After all, many of you know it exists even more clearly than I do. Let me make some suggestions and identify some targets.

The most important need is for government, business and labor to realize that the above problems exist, that we must export, and that in international markets we must function as a team. Each one of the disincentives listed above can be removed, each domestic liability corrected, and each foreign practice copied or improved. Knowing what the problems are and what programs solve them is not enough. The key must be to discern the appropriate steps to change.

One of the best targets for change is the Congress. The Congress can look at exports as a single subject, and examine the wide range of legislation and programs that stand in the way of a coherent export policy. A large number of laws in our country have export inhibiting factors—initiated by committees responsive to interest groups that themselves have no interest in the importance of exports. If Committee jurisdictions interfere with a coherent policy, the Congressional leadership can create a select committee to solve the problem.

One of the best vehicles is a new bill being drafted by Senators Stevenson and Roth. Variously known as "The Omnibus Export Bill" or "National Export Policy Act of 1980," this should provide a focus for an unprecedented national debate. At this moment of government budget balancing, coherence may be more attainable.

The Executive Branch presents a dilemma. Coherence may only be possible when export policy is looked at across the board. When it is not, serious difficulties arise. Let me give you one current example. Activities to undo the damage of Sections 911 and 913 of the IRS code have taken on serious momentum under active industry lobbying in Washington and the leadership of Senator Chafee (S. 2283). But the Administration, in the figure of the Treasury Department, looking at the Sections from a non-export vantage point, is opposed.

This is indicative of the dilemma posed by the Executive Branch and this Administration. Although the Administration has claimed export expansion as a "national priority," significant action has not been forthcoming. If there is one bureaucracy that should be the major target of all who believe in my thesis, it is the Office of Management and Budget (OMB). At times omnipotent, it often takes decisions that conflict with export priorities. OMB must be made to realize that government actions are a major determinant of export levels in the United States.

Examples of OMB behavior include their unimaginative approach to the funding of the Export-Import Bank (in fact, planned EXIM reductions in 1981), the low funding of AID's export-oriented Reimbursable Development Program, and the underbudgeting of commercial assistance activities.

A major problem that must be addressed urgently is that the private sector does not speak with one voice. Business and labor must join forces. You must reach out to senior AFL-CIO officials and look at this problem within the context of the problems that make up labor's agenda. I am convinced that a joint approach is possible; it is clearly necessary.

If your concern is foreign policy restrictions and the use of exports as a chief form of sanctions, consider the following. We have very few tools available to us—either positive or negative. Lacking a wide variety of alternatives, trade becomes an obvious target. If you don't like that you must help in the argument that the international environment today requires a higher percentage

of our national budget going into international activities and that more and better programs need to be devised.

Expanding exports, now more than ever, serves the national purpose. This is an election year. Presidential candidates and congressional candidates should be encouraged to make public statements on the need for an expansionist export policy. This will in turn lay the groundwork for an export-conscious Washington in 1981.

Mr. BINGHAM. Thank you very much.

Mr. Hoefs, will you proceed now, please?

STATEMENT OF RICHARD HOEFS, DIRECTOR, INTERNATIONAL TAX POLICY, ARTHUR ANDERSEN & CO.

Mr. HOEFS. Yes, sir.

Our firm has more than 100 offices in 38 countries, and in that connection we have clients which include many businesses of all sizes and many nationalities. Many of those businesses are very heavily involved in world trade.

My partner and I, however, are not here today appearing on behalf of any client, but because of interests that our firm has in the basic international situation.

DECLINE IN ABILITY OF U.S. COMPANIES TO COMPETE

Our firm has been concerned for several years about the steady deterioration of the competitive position of U.S. business in world markets, and the price that our society is paying as a result of that deterioration. Since the mid-1960's an important trend has developed as a result of which foreign-based companies have been overtaking and replacing U.S. companies in their relative position as the world's major commercial forces. Many factors have contributed to this, among others, the rapid economic recovery of Japan and the European countries from World War II, the varying effects of changing economic factors such as government fiscal policies, inflation, depression, currency adjustments, and of course, political factors.

The downward trend in competitive ability of U.S. companies in relation to foreign competitors can be demonstrated by a review of the annual sales of the top 100 companies in the world. In 1965, 68 of the top 100 companies of the world were U.S. owned. By 1978 that number had fallen to 48; the only major commercial nation to show a decline during this period other than the United States was the United Kingdom, which suffered a loss of about the same proportion as that of the United States.

In contrast, Japanese and French companies showed astonishing growth with Japan's share of the top 100 increasing about 400 percent and France's increasing about 300 percent.

In connection with Senator Stevenson's bill in this area, we testified before the Senate in September of last year. A copy of our testimony is included as part of our statement today. That copy contains considerably greater information on the basic trends that have been occurring which I won't spend time repeating here today.

Mr. BINGHAM. Thank you, Mr. Hoefs. We will be glad to have that for the record.[1]

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[1] The Sept. 18, 1979, statement by Arthur Andersen & Co. before the Subcommittee on International Finance of the Senate Committee on Banking, Housing, and Urban Affairs is retained in subcommittee files.

pages tightly bound

Since I see you have quite an extensive statement here, we will put that in the record in full, and perhaps you can summarize it or give us some excerpts that you think particularly significant.

Mr. **Hoefs.** All right, sir, I would be happy to do that.

IMPORTANCE OF TRADING COMPANIES TO OTHERS COUNTRIES

As is covered in the Senate statement, other countries in the world, particularly Japan, and more recently Korea, have had substantial success with the trading company concept. I am sure most of you are quite familiar with the Japanese success. Therefore I will not go into the details that are covered in our Senate statement.

The Korean developments, however, are more recent and have occurred over a short period of time and therefore might be of great interest.

In 1975 the Korean Government introduced the general trading company system. We are submitting in our written statement a letter from an affiliated accounting firm of ours in Korea discussing the results of this program which the Koreans began in 1975. In the initial year, the Korean trading companies carried on business of about $832 million, which was 16 plus percent of the total Korean exports. The business activity has increased significantly since that time, and as a result, in 1978, the most recent information available, the exports handled by the Korean trading companies were just short of $4 billion, or about 31 percent of the total exports of the nation.

[The letter referred to follows:]

AHN, KWON & CO
CERTIFIED PUBLIC ACCOUNTANTS

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DAEWOO CENTER
CHOONG-KU, SEOUL

5 286, YANG-DONG
TEL. [illegible]

September 17, 1979

Mr. Max I. Stucker
Arthur Anderson & Co.
69 West Washington Street
Chicago, Illinois 60602
U. S. A.

Dear Mr. Stucker,

In accordance with your request as per your telex dated September 5, 1979, we present in the accompanying Appendix relevant information on the Korean general trading company system, particularly those relating to Korean trading companies operating abroad. Based on the enclosed detailed information, we present hereunder our general comments to your specific questions:

1. How successful have these companies been in their effort to develop foreign markets?

   The rates of increases in export operations of these companies in 1976, 1977 and 1978 which are 102%, 93.5% and 22.4%, respectively, indicate a tremendous boost to the government's export drive especially in 1976 and 1977. The lower rate of increase in 1978 seems to indicate a more realistic rate of growth considering the present worldwide economic crisis.

2. What are the major operating factures of these companies and in what ways has the government let its support to these private traders?

   Pages 1 to 2 of the Appendix discribes the general features of the Korean general trading company system, its major policies and operating requirements. The major policies of the government offers advantages in terms of continued government financial support, relaxation of government restrictions, and a more efficient administration of export transactions.

3. Do these companies offer any special inducements such as attractive export financing, discounts, priority shipping, etc.?

The special inducements extended by the government to general trading companies can reasonably justify a more attractive export financing and a faster processing of export shipments.

4. Does the government offer any special inducements to the companies such as reduced taxes?

The Major inducemenets of the government for the' operation of general trading companies are listed on page 3 to 4 of the Appendix.

We hope the accompanying information would adcquately meet your request. Please write us if you need any additional information.

Very truly yours,

RELEVANT INFORMATION ON THE KOREAN GENERAL TRADING COMPANY SYSTEM

A. General Background

In 1975, the Korean Government introduced the general trading company system with the main objectives of avoiding certain weaknesses described hereunder encountered in carrying out the export program and ensuring the continued rapid growth of exports.

1. Inability of the small exporters to undertake specialized international marketing
2. Uneconomical small volumes in units of export by the individual exporters
3. Ineffective performance of direct exports by small manufacturers
4. Instability of the financial position of individual exporters
5. Ineffectiveness of the Government's supports

The major policies of the new system are primarily as following:

1. To induce the individual small exporters to form into a larger unit - general trading company and, if possible, separate the manufacturers form direct exporters.
2. To assist the general trading companies to specialize in international marketing
3. To support them with the necessary financial and administrative benefits.
4. to relax the regid regulations on their overseas operations

B. Operating Requirements

The government prescribed a set of requirements which each company should meet to be able to continue operations as a general trading company:

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PAGE 2

The key points of the requirements involve each company's financial position, total export amount and export amount by item, and number of overseas branches and agents. The details of the requirements which have undergone revisions from 1975 to 1979 are as follows:

	1975	1977	1979
1. Paid in Capital should be over	U$ 2 million	U$ 4 million	NA
2. Total exports should be over	50 million	150 million	2% of the total Korean export of the previous year
3. Number of items exported, each item involving over U$1 million, should be over	7	10	5
4. Number of countries products were exported to, each country involving over U$1 million, should be over	10	20	NA
5. Number of overseas branch	10	20 *	20 *
6. Capital stock should be open to the public for sale	NA	Required	Required
7. Export to strategic areas should be over	NA	1. Actual export Middle East: 15% Middle and South America: 3% Africa : 3% 2. Branches and agents: 2 branches or agents in each of the above areas.	NA

* Although there are more than 2 branches and agents each in the U. S. and Japan, there are counted only as 2 branches and agents.

C. Existing General Trading Companies

Eleven (11) companies were designated as general trading companies in 1975 and 1976 and 13 companies in 1977 and 1978. During 1979, 12 of these general trading companies have continued operations. Table 1 of this Appendix presents pertinent information for each of these 12 companies. All 12 are leading privately owned companies each having over 20 overseas branches and many local affiliated companies, except for Korea Trading International Inc. (KTI), KTI was specially established by the Korean Traders Association for the purpose of exporting products made by many small and medium manufacturers. It is exempted from the requirements mentioned earlier and is designated to operate as a general trading company as part of the government's export strategy.

The total number of overseas branches and agents has increased from 142 in 1975 to 302 in 1979 around all the world, of which about 25% are in Asia, 19% in Middle East, 18% in Europe, 17% in North America, 9% in Middle Europe and South America and 11% in Africa.

D. Status of Export Operations

The total export of general trading companies amounted to US$832 million in 1975, which was 16.4% of the total Korea exports. It, thereafter, increased by 102%, 93.5% and 22.4% for 1976, 1977 and 1978 respectively. 1978 exports reached US$3,985 million, 31.3% of the total Korea exports.

About 25% of the total export of the general trading companies are for Asia including Japan, 38% for North America and 29% for Europe and Middle East areas.

Table 2 of this Appendix shows the export amounts of the general trading companies, including Yulsan Industrial Co., Ltd. which discontinued operations in 1979.

E. Inducement of the Government

The general trading companies have developed so far with the active support of the Government in various aspects. The major inducements from the Government are as follows:

APPENDIX

PAGE 4

1. Trade administration

   - Preferential support in international bidding competition for over 500 thousand dollars

   - Relaxation of regulations on the importation of raw materials

2. Financial aspects

   - Preferential support of export financing over the individual exporters

   - Financing for the stock of finished goods

3. Exchange regulations

   - Increasing the foreign exchange limit of overseas branches and agents

   - Relaxation of regulations relative to foreign exchange transactions of overseas branches and agents.

4. Tax Benefits

   There are no special inducements in tax aspects specifically for the general trading companies. They enjoy the same tax benefits which are generally given to individual exporters as follows:

   - Deferment of taxation on allowance for loss from export, overseas market exploitation and price decrease of exportable goods

   - Treatment of accelerated depreciation as a deductible expense

   - Application of zero Value Added Tax rate for the exported goods.

   - Refund of custom duties on the imported raw materials used for exported goods.

NOTE.—The accompanying tables are retained in subcommittee files.

PROBLEMS OF SMALLER U.S. BUSINESSES

Mr. HOEPS. As has been mentioned earlier by several witnesses, there are many small and medium-sized U.S. companies which don't enter the export market to any significant degree. There are several reasons for this. Many of them have been mentioned earlier and therefore I will not repeat them. They can all be summarized in a sentence or two which basically says it is a pretty complicated world to do business in. There are high risks involved, and these businesses just can't do it alone. They are afraid of it; they don't have the expertise; they don't have the capital, many different reasons. The easy answer to dealing with export opportunities is to maximize what they can do in the United States rather than get into a strange world that has lots of potential but also has lots of problems. And when I make these comments, I do not make them in any critical sense. They are merely factual comments.

GOVERNMENT INCENTIVES

Many other countries in the world, including Japan, have developed governmental aids to exports. I will only describe two such aids today. Again, our Senate testimony contains a detailed table prepared by the Special Committee for U.S. Exports, which identifies many of the activities of other nations. Most countries allow their companies to establish foreign subsidiaries in tax havens to sell exports on the world market, free of national income tax. Subpart F of our Internal Revenue Code imposes U.S. income tax on such practices by U.S. companies.

Second, many countries, particularly those in Europe, have a tax system which allows them to make tax adjustments designed to impose local tax on imports and rebate local tax on exports. This is an inherent mechanism in the value added tax system which is a basic part of the revenue system of the major European countries. Again, our tax system doesn't have such a feature.

We do have the DISC, and while the benefits are limited to some degree, the DISC clearly does aid some businesses, particularly large ones. The DISC provision, as was mentioned earlier by Mr. Rees, however, is highly complex. As an illustration, a few years ago we put together a questionnaire of the possible considerations that a business had to look at in dealing with a DISC. That questionnaire was 30 pages long, which is a good indication of the complexity that is involved in dealing with DISC.

We feel the United States could significantly enhance our export position by involving small- and medium-sized businesses in it far beyond what they are involved at present. However, DISC by itself is not the answer. If it were, such businesses would be aggressively exporting at this point.

At this point I will turn the testimony over to Mr. Ball, who will go on.

STATEMENT OF GERALD T. BALL, PARTNER, ARTHUR ANDERSEN & CO.

Mr. BALL. Mr. Chairman, your subcommittee has asked us to outline the specific provisions contained in the 1979 trading company proposals and how these provisions have changed in the 1980 Senate proposals, presumably as a basis for determining what specific provisions should be in your subcommittee's bill.

There were three proposals introduced in 1979. First introduced was Senator Steven's bill, which recommended the establishment of the trading company concept. The other two bills were introduced at about the same time, S. 864 by Senator Danforth, and S. 1499 by Senator Roth.

Very briefly, included in S. 1663 was a combination of four rather specific incentives. The first was a series of tax provisions aimed at getting large companies with existing distribution networks to set up trading companies to sell the products manufactured by small- and medium-sized companies. The second included some financing provisions which were aimed at defraying the startup costs in these endeavors. The third was a provision providing for the exemption of banks from some of the rules that they were subject to, allowing banks to own trading companies. And the fourth was some antitrust provisions.

Senator Danforth's bill, S. 864, provided for the establishment within the Department of Commerce of an office to promote and encourage the formation and utilization of export trade associations.

Senator Roth's bill, S. 1499, sought to encourage the formation of export trade associations by requiring the timely certification by the Federal Trade Commission of associations exempt under the antitrust provisions.

Now, what has happened this year? Early in January Senator Stevenson and some colleagues introduced S. 2379 in the Senate Banking Committee. This bill has been considered by this committee, and a few weeks ago was approved as Senate bill 2718.

HISTORY OF TRADING COMPANY BILLS

I would like to take a few brief moments to go through the four specific provisions that were included in these bills in 1979 and how they have changed in the bill that was introduced in January, and how those provisions have changed in the bill that was just recently approved.

The four provisions are taxes, financing, antitrust, and banks.

First, as to the tax provisions, S. 1663 which was proposed last fall would in effect have created a trading company which would be taxed just like a foreign corporation. The profits earned by the trading company would be exempt from U.S. tax until remitted to the shareholders, at which time it would be taxed. There would be passthroughs for investment credits and foreign tax credits, and some provisions for carryovers of net operating losses.

That was changed, and I believe the reason was that treating an export trading company like a foreign corporation was considered by most people to be not allowable under the GATT rules. Therefore, in S. 2379, which was introduced in January, the tax provision permitted an export trading company to in effect be taxed as a DISC, deferring a part of the income. This provision was described a little bit earlier. As that bill has been approved, the DISC provision is in S. 2718.

Second, as to the financing provisions, there have been some rather substantial changes. When Senator Stevenson introduced his bill in the fall, S. 1663 contained financing for startup costs in the form of loans from Eximbank, SBA, or the EDA, up to $25 million per company, and per trading company a maximum of $10 million per year. Apparently that was deemed to be too high because S. 2379 which was introduced in January scaled it down considerably, allowing loans of up to only $2½ million per corporation and a maximum limit on the Eximbank of $100 million. In addition, however, Eximbank was permitted to guarantee for 1 year up to 80 percent of the export trading corporation's private sector financing to the extent the loans from the private sector facilitated exports.

In the bill approved by the Senate a few weeks ago, S. 2718, financing provisions have changed further.

Mr. BINGHAM. You mean the Senate Banking Committee, don't you, and not the full Senate?

Mr. BALL. Yes; pardon me, the bill approved by the committee. Loans could be made up to $20 million per year for 5 years, and in addition, the guarantees that could be made were guarantees of loans from the private sector which were secured by export accounts receivable and inventory of exportable products.

The third area is the antitrust provisions, and I will merely say, since I have no expertise in the antitrust area, that S. 1663, which was introduced last fall, had some rather sweeping exemptions from antitrust rules. In S. 2379 and 2718 these provisions have been changed rather significantly. I would rather not comment on them other than just to say we think that they are extremely important based on discussions with many of the companies we work with.

The fourth is the exemption on bank ownership. Essentially, S. 1663, 2379, and 2718 are all pretty much alike in that banks are permitted to own up to 100 percent of an export trading company as long as it doesn't exceed certain percentages of their capital and surplus.

COMMENTS ON H.R. 7230

Now, your subcommittee has asked for our comments regarding H.R. 7230. I think basically our comments go to all the bills that are being considered by your subcommittee. We think the basic problem is one of timing. In order to build into a new company the sizable export activity comparable to that of Japanese and Korean trading companies, it requires considerable time, significant effort and involves many risks. To think of creating a company which can compete with Mitsubishi and Mitsui is rather a phenomenal thing. Therefore, if trading company legislation is going to have any kind of a meaningful impact in very much of a hurry, there are going to have to be added to the bill some types of incentives for large companies to use their existing distribution networks to set up trading companies.

We have tried to determine what business needs in the form of incentives. Earlier this year, in an effort to obtain a better understanding of the attitudes of business toward export trading companies and toward that concept, we had a meeting with several potential trading companies to determine what they thought of the concept. Included in this meeting were two large manufacturing companies with significant export activity, a major international bank, and a U.S. exporter which could already be called an export trading company.

The meeting disclosed a number of very interesting things. First, all the businesses are very concerned over possible antitrust implications of the export trading company concept unless significant legislative changes are made. Therefore, we think that whatever comes out of the legislation must contain something in the form of antitrust exemptions. We won't comment on what those should be because we have no expertise in the area.

In addition, we concluded that many banks would be interested in establishing trading companies if they are permitted to do so. A significant number of banks have the skills in their existing organizations which could be very useful in a trading company effort. These skills include experience in financing, expertise in foreign currency matters, knowledge of international business, and well-organized communications system.

Of most importance, we think companies have to be motivated to establish trading companies which can compete with some of these larger trading companies from other countries that already exist. In our discussion, the manufacturing company saw little appeal in the export trading company concept for their own products, or for the sale of products of other companies. Their present export staffs are already fully occupied. For them to handle additional export sales and selling products for other companies would mean the companies would have to find more knowledgeable people to be involved in the export operation, to handle legal matters and other problems associated with selling products of other companies overseas.

The question, then, is how to motivate companies. We think that there are three different incentives of a tax nature which could be used in your legislation and should be considered. One would be the use of the DISC provisions. These provisions are already in the legislation which has been approved by the Senate, and as I understand it, are in one or more of the bills that are being considered today.

Second, it would seem desirable to allow the export trading company to own a tax haven foreign subsidiary which carries on an export effort. By changing the present subpart F income provisions to exempt from U.S. tax the export income of such a foreign subsidiary, U.S. tax law would be generally comparable to that of governments of major trading competitors of U.S. business.

Third, an area of considerable consequence which needs to be studied carefully involves the significant start-up costs which would be anticipated in the development of significant export activity. Allowing such costs as tax deductions, including carryforwards of unused losses, is not currently a sufficient tax benefit to motivate business to get into an expanded export effort. Therefore, we believe an alternative treatment for such startup costs needs to be considered, particularly as a way to help finance such costs.

Most of the bills contain some sort of provisions allowing Government agencies to finance those costs. Another possibility if the Government financing were not to be used or were not to be used 100 percent, would be to allow qualified startup costs, that are incurred or that are not financed through Government guarantees or loans, as tax credits to the shareholders of the export trading company. In order to be certain the Government does not bear 100 percent of the risk involved, such credits could be recapturable after a specific period of time, such as 5 years. Under this approach, the ultimate risk for the business activity would be on the shareholders, but the Government would provide the initial financing needed.

One final point. In considering the tax and financing incentives, the restrictions under the General Agreement on Tariffs and Trade need to be kept in mind. Under GATT, there are definite limitations on what a government can provide. There seems to be considerable uncertainty within the executive branch as to the exact status of DISC under the recent multilateral trade agreements. Because of this uncertainty, it is difficult for us to determine whether the existing DISC provisions could be effectively utilized, either in their present form or on a modified basis as a part of the export trading company activity. If tax incentives are to be utilized, it is important that this uncertainty be clarified in order to determine whether the DISC principle of deferral can be utilized by export trading companies. Without such a clarification, it would seem very difficult for any effective tax incentive provisions to be included in the export trading company concept as it has been considered by the Congress.

Thank you very much, Mr. Chairman.

[Mr. Hoefs' and Mr. Ball's prepared statement follows:]

PREPARED STATEMENT OF RICHARD HOEFS, DIRECTOR, INTERNATIONAL TAX POLICY, AND GERALD T. BALL, PARTNER, ARTHUR ANDERSEN & CO.

I am Richard Hoefs, Director of International Tax Policy of Arthur Andersen & Co., an international accounting firm. I am accompanied by Gerald T. Ball, a partner in our Washington, D.C. office who has had extensive experience with some of our multinational clients.

My firm has more than 100 offices in 38 countries. Our clients include many businesses of all sizes and many nationalities. Many of them carry on business activities in world trade.

BACKGROUND

Decline in ability of U.S. companies to compete

Our firm has been concerned for several years about the steady deterioration of the competitive position of U.S. business in world markets and the price our society has paid as a result of that deterioration.

Since the mid-1960's, an important trend has developed. Foreign-based companies have been overtaking and replacing U.S. companies in their relative position as the major commercial forces in the world. Many factors have contributed to this—the rapid economic recovery of Japan and the European countries from World War II, the varying effects of changing economic factors—such as government fiscal policies, inflation, depression and currency adjustments—and, of course, political factors.

The downward trend in competitive ability of U.S. companies in relation to foreign competitors can be demonstrated by a review of the annual sales of the top 100 largest companies in the world. In 1965, 68 of the top 100 companies of the world were U.S. owned. By 1978, that number had fallen to 48; the only other major commercial nation to show a decline during this period was the United Kingdom, which suffered a loss of about the same proportion as that of the United States.

In contrast, Japanese and French companies showed astonishing growth with Japan's share of the world's top 100 companies increasing about 400 percent and France increasing about 300 percent.

One important reason for this shift in economic power among nations is that many governments provide incentives to give competitive advantages to their businesses. We believe it is time for the U.S. Government to change the nature of its involvement and actively assist the world trading activities of U.S. business with an objective of increasing U.S. international business and the export of U.S. products.

Importance of trading companies to other countries

Mr. Chairman, the Export Promotion and Export Trading Company Act of 1980 could be very helpful. Of even more importance, it might start a positive trend.

You are familiar with Japan's rise from the ashes of World War II to become a major world economic power. Trading companies played a key role in that achievement.

In Japan, about 10 trading companies account for a substantial part of the exporting and importing of products. More than 50 percent today of all Japanese exports are channeled through trading companies. Total business activities in exporting, importing and third country remarketing exceeds $200 billion per year. These sales were equivalent to about 12 percent of gross sales of all Japanese industry and roughly 30 percent of gross national product.

Japanese trading companies are unique in the world. They buy, sell, barter, put together deals, form joint ventures, finance, warehouse and transport. In short, they provide virtually every commercial service needed to get goods produced by one party and sold to another party somewhere in the world. They are true experts in the field of exporting and wield substantial economic power in foreign markets on behalf of Japanese producers.

Korea has also developed the concept of trading companies to stimulate their exports. In 1975, the Korean Government introduced the general trading company system with the following policies: to induce the individual small exporters to form large units, to assist the general trading companies to specialize in international marketing, to support them with the necessary financial and administrative benefits and to relax the rigid regulations on their overseas operations.

We are submitting in our written statement a letter we received from Ahn, Kwon & Co., Public Accountants in Seoul, Korea, an affiliate of our firm discussing the various aspects of the Korean trading companies. The total export of the Korean general trading companies amounted to US$832 million in 1975, which was 16.4 percent of the total Korean exports. It, thereafter increased by 102 percent, 93.5 percent and 22.4 percent for 1976, 1977, and 1978 respectively. Exports in 1978 reached US$3,985 million, 31.3 percent the total Korean exports.

As is evident from the experience in Japan and Korea, the trading company vehicle can stimulate substantial export activity.

Problems of smaller U.S. businesses

We believe there are many small and medium-sized U.S. companies which have not entered the export market to any significant degree. There are several reasons for this.

A small business cannot possibly know market conditions around the world. Each country has its unique marketing problems, and most countries are quite different from the United States. The small businessman faces uncertainty in risks caused by the wide currency fluctuations, and costs in connection with collection problems. In addition, the small businessman simply cannot afford the time and paperwork needed to comply with the bewildering array of complex export procedures.

American entrepreneurs can surmount all of these problems, but the typical small business cannot do it alone—There is too much risk and too high an investment. Even when profit margins are good, the limited export volume that a small company can expect does not justify the effort. A well organized trading company with contacts throughout the world could help small and medium-sized businesses by knowing how to handle these risks, thereby preventing the mistakes that discourage the individual company from export markets.

Government incentives

Every major commercial nation including Japan has developed governmental aids to exports. I will only briefly describe two such aids in this testimony.

Most nations allow their companies to establish foreign subsidiaries in tax havens to sell exports in world markets free of national income tax. Subpart F of our Internal Revenue Code imposes U.S. income tax on such practices.

Second, many countries, particularly those in Europe, make tax adjustments designed to impose local tax on imports and rebate local tax on exports. Our tax system contains no such features.

U.S. business does have the DISC provisions to assist it in exporting. While benefits are limited, they clearly aid some businesses, particularly larger ones in export endeavors. The DISC provision is highly complex, difficult to meet, and often of limited help in developing a new export business. As a result, they have minimal value to small and medium-sized business in our society.

We would significantly enhance our export position by involving much more actively the thousands of successfully small and medium-sized manufacturers.

PROPOSED TRADING COMPANY LEGISLATION

The Senate has considered and is presently considering various bills in connection with the trading company concept. Our firm provided testimony to the Senate Subcommittee on International Finance last September on Senate Bill 1663, a Bill introduced in 1979 by Senator Stevenson. We have submitted in our written statement a copy of that testimony. S. 1663 recommended the establishment of the trading company concept. Two other bills were introduced simultaneously, S. 864 by Senator Danforth, and S. 1499 by Senator Roth.

Included in S. 1663 were a combination of financing incentives, tax incentives, allowances for bank ownership and provisions providing for exemption of export trading companies from antitrust provisions. Specifically, the Bill provided that a trading company could be organized by banks and other existing companies, large or small, limited only by maximum ownership limitations. Financing for the export trading companies could be provided by the Export-Import Bank, Small Business Administration or the Economic Development Administration. Loans from these institutions could not exceed a maximum dollar amount per year or during a 5-year period.

The export trading company, as proposed under S. 1663 would have provided some exemptions from anti-trust laws. This bill also provided various tax incentives. These incentives included the exemption from corporate taxation for export trading companies, the pass through of investment tax credits to the shareholders of the export trading companies, and the allowance of foreign tax credits of the business to be creditable by shareholders.

Additional tax incentives included the exemption of the export trading company from intercompany pricing rules, and the allowance of net operating loss carryforward for 10 years.

Senator Danforth's Bill (S. 864) provided for the establishment within the Department of Commerce of an office to promote and encourage the formation and utilization of export trade associations. This bill planned to promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering the Act from the Chairman of the Federal Trade Commission to the Secretary of Commerce.

Senator Roth's Bill (S. 1499) sought to encourage the formation of export trade associations by requiring the timely certification by the Federal Trade Commission of associations exempt under the anti-trust provisions.

The combination of the anti-trust provisions in all these bills (S. 1663, S. 864 and S. 1499) would allow export trading companies to be substantially exempt from unnecessary anti-trust restrictions.

Some additional bills have recently been introduced in the Senate Committee on Banking. Senate Bill 2718 was approved by that Committee on May 12, 1980. This Bill provides for the encouragement of exports by facilitating the formation and operation of export trading companies, export trade associations and the expansion of export trade services generally. Specifically S. 2718 provides for financing incentives similar to those proposed under S. 1663, Senator Stevenson's Bill. Banks are to be eligible to participate in the formation of export trading companies and could wholly own export companies limited only by their capital surplus. The export trading company is also exempt from the antitrust provision. The tax incentive of this Bill provides for the extension of the DISC provisions to the export trading company and the application of the Subchapter S provisions.

The various Senate Bills seem to be seeking the right combination of incentives (or removal of disincentives) to stimulate the exporting of U.S. products.

COMMENTS REGARDING H.R. 7230

The Export Promotion and Export Trading Company Act represents legislation of a general nature. It does not consider many of the features contained in the Senate bills. It has no tax or financing features. Its antitrust provisions are limited in relation to those of the Senate bills. The Senate legislation originally had as an objective trying to motivate large businesses to utilize their existing export expertise to serve the export needs of small business.

To build a sizeable export activity comparable to that of the Japanese and Korean trading companies requires considerable time, significant effort and involves many risks. If an important objective of the legislation is to bring the

U.S. balance of payments deficit into balance within a few years, small businesses will not be able to accomplish this by themselves. As a general matter, neither small nor large businesses are likely to significantly change business activities in the present economic situation, without some meaningful incentives.

Earlier this year, in an effort to obtain a better understanding of the attitude of business toward the export trading company concept, we held a meeting with several potential trading companies to determine what they thought of the concept. Included in the meeting were two large U.S. manufacturing companies with significant export activity, a major international bank and a U.S. exporter which could already be called an export trading company. The meeting disclosed a number of very interesting things. First, all the businesses are very concerned over possible antitrust implications of the export trading company unless significant legislative changes are made. Our Firm is not knowledgeable on antitrust matters and therefore cannot comment regarding what is needed in that area. However, based on prior utilization of Webb-Pomerene Associations, it is doubtful if expansion of that concept will be significant to provide the antitrust protection which business seems to feel is needed.

As a result of our discussion, we believe many banks would be very interested in establishing trading companies if they were permitted to do so. Many banks have many skills in their existing organizations which could be very useful in a trading company effort. Such skills include experience in financing, expertise on foreign currency matters, knowledge of international business, knowledge of business, a well organized communication system, and a solid reputation with manufacturing businesses who might be natural suppliers for a trading company.

In our discussion the manufacturing companies saw little appeal in the export trading company concept. Their present export staffs are already fully occupied. For them to handle additional export sales and products of a different nature would mean the companies would have to find more knowledgeable people to involve in the export operation. Learning new product lines would be troublesome to existing personnel, although such problems might be minimized by having the protection lines compatible to those of the manufacturing company itself. Presumably the closer the new product lines relate to those of the manufacturer, the more difficulty there would be with the antitrust area. Further, an involvement with products of other manufacturers would require the companies to concern themselves with legal and personal relationships with such manufacturers which would result in additional business problems and complications.

In order to attract meaningful involvement of both small and large business, incentives of some sort would seem to be required. Tax incentives would seem to have greater use to larger companies which have less difficulty meeting financing needs. Both financing and tax incentives would be important in obtaining the active participation of small businesses.

In the tax area, several types of incentives might be considered. For example, he business activities of an export trading company under the bill include nany activities which qualify under existing DISC provisions. There would be, owever, a need to expand the allowable activities of DISC if all export trading ompanies are to be qualified as DISCs. Further, existing DISC benefits could e expanded in several different ways including allowing 100 percent of qualified ISC income to be deferred. Another possibility would be to eliminate the resent DISC provision which requires export gross receipts to exceed a base eriod level before DISC benefits are available. In particular, this change might e considered for smaller businesses if there seems to be a greater need to otivate small business people to get into the export area.

It would be desirable to allow the export trading company to own a tax haven oreign subsidiary which carries on an export effort. By changing the present ubpart F income provisions to exempt from U.S. tax the export income of ich a foreign subsidiary, U.S. tax law would be generally comparable to that governments of major trading competitors of U.S. business.

An area of considerable consequence which needs to be studied carefully volves the significant start-up costs which can be anticipated in the development of significant export activity. Allowing such costs as tax deductions including carryforwards of unused losses) is not currently a sufficient tax enefit to motivate business to get into an expanded export effort. Therefore, alternative treatment for such startup costs needs to be considered, particurly as a way to help finance such costs. S. 1663 contained provisions allowing overnment agencies to finance such costs. Another possibility could be to allow qualified startup costs as a tax credit to the shareholders of the export trading company. In order to be certain the government did not bear 100 percent of the risk involved, such credits could be recapturable after a specific period of time such as five years. Under this approach the ultimate risk for the business activity would be on the shareholder, but the government would provide the initial financing needed.

In considering tax and financing incentives, the restrictions under the General Agreement on Tariffs and Trade need to be kept in mind. Under GATT there are definite limitations on what a government can provide. There seems to be considerable uncertainty within the executive branch as to the exact status of DISC under the recent multilateral trade agreements. Because of this uncertainty, it is difficult for us to determine whether the existing DISC provisions could be effectively utilized either in their present form or on a modified basis as part of the export trading company activity. Such doubts should be resolved. If tax incentives are to be utilized, it is important that this uncertainty be clarified in order to determine whether the DISC principle of deferral can be utilized by export trading companies. Without such a clarification, it would seem very difficult for any effective tax incentive provisions to be included in the export trading company concept as it is considered by the Congress.

Mr. **Bingham.** Thank you, gentlemen, for very detailed statements. I might suggest that the other witnesses try to avoid duplicating the comments that have already been made. We still have a number of witnesses to hear, and time is going by.

Our next witness is David A. Hartquist, of Collier, Shannon, Rill & Scott.

STATEMENT OF DAVID A. HARTQUIST, PARTNER, COLLIER, SHANNON, RILL & SCOTT

Mr. **Hartquist.** Thank you, Mr. Chairman, Congressman Lagomarsino. I appreciate the opportunity to testify before you today. I am David A. Hartquist, a partner in the Washington law firm of Collier, Shannon, Rill & Scott. I have been involved in international trade issues for some years, having served as Assistant to the President of the Overseas Private Investment Corporation, General Counsel to the Council on International Economic Policy under President Ford, and more recently in my law practice. I might add that I started my legal career as a lawyer for Bank of America out in California and still have some interest in the banking aspect of this legislation, and also that in my current practice, we deal typically with clients in domestic industries heavily impacted by imports, such as steel and color television, shoes, bicycles, and so forth. So we know firsthand, I think, the impact of the success of particularly the Japanese trading companies on our market.

I also served as a legal consultant to Hay Associates with respect to a study prepared for the Department of Commerce in March 1977 entitled "A Study to Determine the Feasibility of the Export Trading Company Concept as a Viable Vehicle for Expansion of United States Exports." Within the last several weeks, we have joined with Economic Consulting Services, Inc., in submitting a proposal in response to a Commerce Department request for bids on a study of the feasibility of using this concept in the U.S. textile and apparel industries.

Mr. Chairman, I would like to read a statement to you which I think you will find interesting. This comes from a report by the Federal Trade Commission, and in that report the Federal Trade Commission made two basic findings: One, that other nations have marked advantages in foreign trade from superior facilities and more effective organizations; two, that doubt and fear as to legal restrictions prevent Americans from developing equally effective organizations for overseas business, and that foreign trade of American manufacturers and producers, particularly the smaller concerns, suffers in consequence.

Mr. Chairman, those two statements came from a report by the FTC to Congress dated June 13, 1916.

Mr. **Bingham**. 1916?

Mr. **Hartquist**. 1916; 2 years before the enactment of the Webb-Pomerene Act. I read it to you because I think you will agree that the exact concerns expressed in 1916 still apply to the situation today, and that is why I am here giving testimony.

Mr. **Lagomarsino**. If I might interrupt you at this point, I think they would have to add at this point that the doubt and fear would extend to the FTC itself.

Mr. **Hartquist**. Well put. I would agree.

NEED FOR U.S. EXPORT TRADING COMPANIES

Let me state first that I am firmly convinced that the United States needs to develop a viable export trading company system to compete in the international marketplace. As I said, I know from personal experience how difficult it is to compete, particularly with the giant Japanese trading companies and those of other countries.

Beyond that, exports are vitally important to U.S. trade and economic policy. In addition to the substantial benefits to the U.S. trade balance, increased exports are associated with increased incomes and employment. For domestic producers, exports can open up new markets for their products, often during a period when domestic demand is waning. The world market is much larger than the U.S. market alone, and therefore offers greater growth potential. Increased production can lead to increased earnings for producers and increased employment opportunities for domestic workers. However, despite the importance of exports, U.S. trade performance has been disappointing in recent years. Table 1 shows what has happened to the U.S. merchandise trade balance between 1972 and 1979. Last year's deficit was over $29 billion. In addition, the U.S. share of total world manufactured exports declined from 21.3 percent in 1970 to 17.4 percent in 1979.

[The table referred to follows:]

U.S. merchandise trade balance, 1972–79

	Millions		*Millions*
1972	−$6,416	1976	−$9,306
1973	911	1977	−30,873
1974	−5,343	1978	−33,759
1975	9,047	1979	−29,450

Source: U.S. Department of Commerce, Bureau of Economic Analysis.

In recognition of this problem, the United States has adopted a more positive export policy geared toward export stimulation. With a deteriorating trade balance, a pending recession, and unemployment at home, the U.S. Government has at last recognized the significance of encouraging export growth. The establishment of the President's Export Council enhanced efforts in export promotion by executive branch agencies and the recent trade reorganization offers some promise of Government support for potential exporters. Any avenue that can contribute to improved U.S. export performance—especially by U.S. businesses and industries that have not done well in recent years—must be explored.

There is no question that great untapped potential for exporting exists today in many sectors in the U.S. economy. Last year Senator Weicker introduced a bill, S. 2104, to increase export opportunities for small businesses, and he said that:

> Today only 250 firms account for 85 percent of all U.S. exports; yet the Department of Commerce estimates that 20,000 firms have the potential to export successfully. Of these companies with export potential, 18,000 are small- and medium-sized firms.

USE OF EXPORT TRADING COMPANIES TO STIMULATE EXPORTS

In order to establish a broad-based and long-term commitment to export markets, it is necessary to create viable institutions through which the opening, penetrating, and servicing of export markets can efficiently take place over a long period of time. One of the most intuitively appealing of such institutions, as we have heard, is the export trading company, a vehicle which has been used with great success by other major developed and developing countries.

An export trading company, ETC, may be defined as a firm or association that provides specialized export services for a group of manufacturers. Such services may include contacting customers, providing market research, consolidating freight, designing products, making necessary credit and financial arrangements, and providing any other form of export assistance needed by its clients. An ETC may provide more company-specific and hence more useful services than those provided by the Government.

The concept of an ETC seems sound, and there have been some successes. Amatex, for example, is a Webb-Pomerene association that has been successful in bringing together producers of complementary products, and sells entire textile mills in foreign markets, something that its individual members would have great difficulty in doing. I might add that my firm represents Amatex, and we feel that Amatex has had great success in competing against Japanese, Swiss, and British trading companies in the textile mill area, and of course, these companies, given the state of the textile industry in the United States today, would have difficulty selling on the domestic market. So they look overseas.

Some forms of ETC's with Government support continue to be used by exporters in other countries to enhance their competitive position. The Canadian Government, for instance, supports costs incurred in the formation and initial operation of consortia formed by small- and medium-sized firms to help them compete in export markets. In addition, the Canadian Government facilitates joint bidding on major international projects.

WHY THE WEBB-POMERENE ACT DOESN'T WORK

Now, I would like to comment briefly on why the Webb-Pomerene Act doesn't work. The act was passed in 1918. Since that time, about 260 Webb-Pomerene associations have been created. Yet only 33 exist today, and these account for only about a 2-percent share of total U.S. exports. What's wrong with the Webb-Pomerene Act?

First, uncertainty. Over a period of years, the Department of Justice has issued a series of statements concerning potential antitrust liabilities which have had the effect of scaring off potential Webb-Pomerene associations. This combined also with judicial decisions and actions by the FTC, and I think it is clear that one of the problems is the lawyers. If the lawyers won't give their OK to the formation of Webb-Pomerene associations and give some certainty to their clients that they will be protected from antitrust prosecution, very few firms will be willing to go ahead. Amatex is certainly an exception.

Second, we found in the study we did with Hay Associates that the Webb-Pomerene Act does not provide the necessary legal basis for requiring companies to remain associated with an export trading company for an extended period of time, or second, for requiring that firms sell their products solely to the trading company. The Hay study concluded that for business reasons, it was highly desirable to require suppliers to operate through a trading company for a prescribed period of time once a relationship had been established, and that it was also highly desirable to require suppliers not to export independently in competition with the trading companies.

Third, most Webb-Pomerene associations, with the notable exception of Amatex, are organized horizontally. That is, they are associations of companies producing essentially the same product, frequently a commodity. Yet for American export trading companies to compete with Japanese giants, if that is what we have in mind, they must be organized vertically. They must be able to pull together such functions as production, distribution, financing, and servicing.

Fourth, it is essential to provide a preclearance procedure to scrutinize proposed export trading companies' activities in order to assure compliance with the domestic antitrust laws. A preclearance procedure would help substantially to reduce the kind of uncertainty I referred to a few moments ago.

Last, it is essential that there be Government support for the export trading concept. By this I mean active Government support, not simply the passage of legislation by the Congress, which is a needed first step. It is interesting that the Hay Associates report concluded that in no case did a trading company develop in a country where export trade was not considered vital. Even more important, trading companies did not emerge as a result of the interest of business, in many cases, but rather because of outside stimulation such as from their home governments.

COMMENTS ON PENDING BILLS

Mr. Chairman, I certainly wish to commend you and other members of this subcommittee who have taken a deep interest in developing this type of legislation. It is needed. Let me make a few comments on H.R. 7230 and H.R. 5061.

First, I prefer the approach of H.R. 5061 which repeals the Webb-Pomerene Act and provides for a procedure whereby the Secretary of Commerce reviews applications for the formation of export trading companies and certifies the eligibility of such groups. I would add another provision which has been included in the Senate legislation recently reported. That is, I recommend that the Attorney General have the opportunity to review and comment on applications for certification before they are acted on by the Secretary of Commerce. It seems to me that the Justice Department should have a chance to review possible domestic antitrust effects of such export trading companies or associations before the Commerce Department acts.

Second, I oppose provisions such as section 5 of H.R. 7230 which permit State or local governments to own export trading companies. I would not oppose the support or participation of governments in export trading companies, but it seems to me that we should draw the line at majority ownership. When Government becomes an owner, political considerations are added to the business decisionmaking process which I believe are undesirable.

Third, I recommend that provisions be added providing for the participation of private banks, and Export-Import Bank loans and guarantees, and incidentally, I think this ought to include the participation of AID in these projects as well. Ex-Im has been willing to help finance export trading company or Webb-Pomerene activities, but AID has taken a different interpretation of the law and has been unwilling to do so. My understanding is that such provisions on banking may be added later by this committee, perhaps along the lines of the provisions contained in the Senate legislation. I firmly believe that equity participation by financial institutions is a highly desirable aspect of the organization of ECT's. In fact, that is one of the elements which makes the Japanese trading companies so successful.

I appreciate the opportunity to testify before you today, and I will be happy to answer any questions.

Thank you.

Mr. BINGHAM. Thank you, Mr. Hartquist.

BANK CONTROL

I would like to ask all of you how you feel about the possibility that banks could, under some of these bills, obtain a controlling interest in an export trading company.

Mr. HARTQUIST. Mr. Chairman, I will be glad to lead off on that. I guess I have some prejudice as an ex-bank attorney. I think, having reviewed the provisions of the Senate bill, that there are sufficient safeguards in those provisions to assure that banks won't violate the traditional distinction between commerce and banking activities. I would not allow unfettered participation by banks as equity participants, majority participants, but it does seem to me that majority participation can be handled by the bank regulatory agencies, given the kind of guidelines that are in the Senate bill.

Mr. BINGHAM. Ambassador Samuels, do you want to comment?

Ambassador SAMUELS. Very briefly, I don't have the same prejudice Mr. Hartquist has, never having been a lawyer or involved with a bank, but I agree with him completely.

Mr. BINGHAM. Mr. Hoefs?

Mr. HOEFS. I would agree with Mr. Hartquist also. I believe that the regulatory agencies would do more than an adequate job of taking care of any conflict of interest questions, but I would also point this out. Looking at that question, it seems to me the objective of the legislation needs to be identified. How important is it to get a big leg up on the trade deficit and increase U.S. exports in a major way? If it is extremely important, then you really are missing a good part of the possibility by not including banks in this activity because they have a great deal of expertise to bring to bear.

ANTITRUST

Mr. **Bingham**. I think it was you, Mr. Hartquist, who suggested that the provision with respect to antitrust should be the repeal of the Webb-Pomerene Act.

What provisions would then apply? The Webb-Pomerene Act was an exception to the antitrust laws. If you repeal the Webb-Pomerene Act, you leave the antitrust laws in effect totally, don't you?

Mr. **Hartquist**. I should make that clear, Mr. Chairman. I didn't intend that it would be repealed entirely but rather simply as a matter of kind of breaking with the past, amending the act and repealing the old language. I am really talking about amending the act and starting anew.

Mr. **Bingham**. Thank you.

Mr. Lagomarsino?

Mr. **Lagomarsino**. I guess what you are talking about is repealing the act but replacing it with something that would do the things you are talking about.

Mr. **Hartquist**. Exactly.

Mr. **Lagomarsino**. We could still call it Webb-Pomerene if that makes everybody happy, though it would be considerably different than it has been.

Mr. **Hartquist**. Yes, indeed.

Mr. **Lagomarsino**. I would like you to comment on whether you see any kind of conflict between your recommendation of close cooperation between the Government and private enterprise in this field, and your position that governments should not own export trading companies.

Mr. **Hartquist**. No, Congressman, I don't see any conflict at all. There are many areas in which Government provides various types of support to business but does not participate as an equity owner or certainly as a majority owner in the project. So I think there is really no conflict there whatsoever.

Mr. **Lagomarsino**. Mr. Chairman, I don't believe I have any more questions at this point. I would like to say that I certainly appreciate having the testimony of these witnesses, and I think they make some excellent suggestions to improve the legislation. I would ask the staff to consider them.

Mr. **Bingham**. Thank you.

These statements have been very helpful indeed, and we certainly will give them careful consideration.

RELATIONS WITH THIRD WORLD

As a former ambassador, Mr. Samuels, you might want to comment on this from the point of view of our relations with the Third World. Do you think this is likely to cause us problems in the Third World? Will they feel that this is a new form of economic imperialism?

Ambassador **Samuels.** Heavens, no. All we are suggesting is that we match the kinds of activities that many other countries are doing, and in fact, in many of the areas of the Third World, there are basic questions as to why the United States is doing so relatively poorly right now. I think this would show them that we are interested in returning to the preeminence that we once had.

Mr. **Bingham.** Thank you.

Thank you, gentlemen.

Mr. **Lagomarsino.** Could I follow up on that?

You know, that is an interesting thing, and I have felt for a long time that one of the best foreign relations tools we had, if used properly, is foreign trade and the presence of our people in other countries on a continuous basis, sometimes for long periods of time, sometimes a short time, sometimes ambassadors and diplomatic personnel. The policy usually doesn't change as much with a commercial enterprise as it does with a government enterprise, and you know, it just seems to me that we have been missing the boat here, and I would suspect also that with regard to the chairman's question and your answer that a lot of the Third World really wonders what is going on. Not only are we losing the business, but we probably, I would suspect, at least in some cases, are losing respect, and it is hurting our whole stature.

Ambassador **Samuels.** I think you are absolutely right, and as you know from testimony I have given to other subcommittees that you have been on, I think that one of the sad things is that our government mechanism has not devised the appropriate number and type of support systems to encourage the complete and positive involvement of the private sector in the process of development in the developing countries and to support our own interests, not just economic ones but political ones as well.

Mr. **Lagomarsino.** Thank you.

Mr. **Bingham.** Thank you very much, gentlemen. We appreciate your appearance today.

Our final two witnesses are Donald McCouch, senior vice president of the Manufacturers Hanover Trust Bank, representing the Bankers' Association for Foreign Trade; Mr. Ralph Chew, president, Chew International Corp., and president, National Association of Export Companies.

Mr. **Chew.** Mr. Chairman, I have asked Mr. Ducat, a member of our association, to join us.

Mr. **Bingham.** We have held you for a long time. If either of you has a time problem, we can try to accommodate you.

Mr. **McCouch.** Mr. Chairman, I am accompanied by Gary Welsh and Thomas Farmer of the firm Prather, Seeger, Doolittle & Farmer.

Mr. **Bingham.** Very well.

Will you proceed?

STATEMENT OF DONALD McCOUCH, VICE PRESIDENT, BANKERS ASSOCIATION FOR FOREIGN TRADE

Mr. **McCouch.** I am vice president of the Bankers' Association for Foreign Trade, known as BAFT, and appear in that capacity today. I am also senior vice president and deputy general manager of Manufacturers Hanover Trust Co. I am joined by the gentlemen whom I mentioned.

Today, BAFT's voting membership of 147 U.S. banks includes virtually all of those having significant international operations. The association also includes as nonvoting members 95 foreign banks maintaining offices in the United States.

BAFT is pleased to have this opportunity to testify in support of the several bills pending before this subcommittee to facilitate the establishment of export trading companies and trade associations because the support and promotion of U.S. exports has been one of BAFT's fundamental priorities since its inception.

In my statement this afternoon, I would like to focus not only on the need for export trading companies, which has been covered very amply in the previous testimony, but particularly on the contributions which U.S. banking organizations can make toward their success. In this regard, we support section 5 of H.R. 7310, which section parallels a provision of S. 2379 that we earlier supported in testimony before the Senate Banking Committee. We are also encouraged to see that in his remarks upon introduction of H.R. 7230, Representative Bonker stated that he expected to offer amendments to his bill in subcommittee dealing with involvement of financial institutions.

NEED FOR U.S. EXPORT TRADING COMPANIES

The key question is how to involve more U.S. firms in exporting, especially those smaller companies whose products may be competitive but which companies lack export know-how.

Export trading companies respond to this need. They will concentrate export trade experience and the financial sophistication required to arrange sales in export markets.

The BAFT believes its membership can contribute to insuring the success of the export trading company concept. The effect of the proposed legislation would be to facilitate the formation of export trading companies and to allow U.S. commercial banks to make a meaningful contribution to their development.

At present, a foreign bank doing business in the United States may invest in a foreign trading company that exports to the United States, but a U.S. banking organization may not invest in a U.S. export trading company that buys U.S. goods for the purpose of exporting them abroad. In other words, the accepted line separating banking and commerce frustrates development of United States but not foreign trading companies. BAFT believes it is time to move that line to a point where it will do the most good for U.S. exports and the U.S. economy without compromising separation of banking from commerce within domestic markets.

Because the trading company concept is new to the United States, it is difficult to generalize as to the types of organizations that may evolve or on the ways banking organizations may choose to participate in them. In general, we believe the strength of H.R. 7230 and H.R. 7310 is that instead of mandating a particular form of trading company or imposing an industry model, these bills leave it up to the U.S. private sector to develop what is likely to be a highly diverse group of trading organizations.

I should emphasize the importance of banking organizations being permitted to participate not only in export trading companies dealing in merchandise, but in firms providing exclusively export trade services, such as freight forwarders. Many banking organizations including many smaller and regional banks would like the oportunity to expand their range of trade services without necessarily having to invest in a trading company that buys and sells goods. Such service export companies could offer packages of services appealing to a large variety of possible exporters.

CONTRIBUTIONS TO BE MADE BY BANKING ORGANIZATIONS

Now, let me highlight just a few of the important contributions which banking organizations can make to the success of export trading companies and thus the improvement of U.S. export performance.

First, the U.S. banking system reaches virtually every U.S. business, not only the large multinationals but small- and medium-sized U.S. businesses. U.S. banking organizations can thus provide an important introductory link between trading companies and U.S. companies whose goods and services could be sold in foreign markets.

U.S. banks already play an important role in introducing Eximbank, FCIA, and other export finance programs to businessmen throughout the country. Simply put, there is no better way to reach U.S. businesses than through the banking system.

Second, given the broad range of export financing options throughout the world today, the finance component of an export sale is sometimes its most crucial element. To be competitive, export trading companies must be knowledgeable in international export financing schemes and particularly those of the United States. Bank participation in a trading company will promote the trading company's sophistication in putting forward realistic financing options.

Third, bank participants can help trading companies penetrate markets abroad and can provide U.S. export trading companies with the knowledge and experience crucial to meeting foreign competition. Many U.S. banks have substantial international networks, extending into most major U.S. export markets and forming a tremendous reservoir of talent and experience for a trading company. Foreign branches and affiliates of U.S. banks have detailed knowledge of local economic conditions, government policies, foreign exchange regulations, business practices, which would take a de novo trading company years to develop on its own, and which knowledge is crucial for competing abroad and concluding a sale. Equally important, even the smaller American banking organizations have correspondent relationships not only with other United States but wit foreign banks whose knowledge can be brought to bear on behalf of a U.S. export trading company. Therefore, the reach of a U.S. banking organization may extend substantially beyond its own network of operating units and representative offices.

Fourth, permitting banking organizations to link with trading companies will enable U.S. trading companies to enjoy a benefit allowed trading companies in many other countries in respect to bank involvement. Thus, in this regard, we put U.S. export trading companies on an equal footing with the foreign competition.

Let me illustrate. The complexity of a turnkey export sale is considerable, typically involving integration of numerous merchandise and finance components. Often such a requirement arises in a developing country where local knowledge is also critical. Here American exporters find foreign competition at its keenest. It would be wrong to underestimate the competitive role often played by foreign trading companies and their related banks in these efforts. We believe U.S. exporters should have access to similar support.

While banking organizations can make a positive contribution to U.S. exports through participation in trading companies, BAFT and its members believe that there are legitimate questions concerning the scope of bank participation which have to be carefully considered. In general, we believe these questions can be handled through the regulatory process. Nevertheless, we believe it is appropriate to establish certain safeguards in the governing statute. The limits included in section 5 of H.R. 7310 appear workable and prudent in our judgment.

ANTITRUST CONSIDERATIONS

In relation to antitrust considerations, I would like to say that BAFT supports H.R. 5061, and we would urge the subcommittee to extend its benefits to export trading companies. It is important that service industries be extended the benefits of the Webb-Pomerene Act, and that the act itself be reshaped to give such associations more antitrust certainty in their joint operations overseas. We think it of equal importance that trading companies be given the opportunity to obtain a Webb-Pomerene exemption for their export trade activities as provided in section 6 of H.R. 7230, and section 9 of H.R. 7310.

TAX CONSIDERATIONS

As to tax considerations, since DISC may be our only export tax incentive under MTN, we support provisions such as are included in section 1 of H.R. 7310 that would afford export trading companies DISC eligibility. In particular, we support section 1(A) of H.R. 7310 which would make it clear that bank ineligibility for DISC would in no way affect DISC eligibility for export trading companies with a bank shareholder.

EXIMBANK INVOLVEMENT

Section 7 of H.R. 7310 refers to Eximbank involvement in the export finance company concept. We support the principle of giving export trading companies access to Eximbank and feel there is merit to considering new Exim programs designed to assist particularly the small exporters or export service firm.

In conclusion, I would like to express our support for passage in this Congress of legislation providing for the establishment of export trading companies with opportunities for meaningful participation by U.S. banking organizations. My colleagues and I would, of course, be pleased to answer any questions you might have. I would also like to take this opportunity to express our willingness to work with your staff on any aspects of this legislation where our input may be of assistance, and I would like also to ask that our written statement be inserted in the record, if I may.

[Mr. McCouch's prepared statement follows:]

Prepared Statement of Donald McCouch, Vice President, Bankers' Association for Foreign Trade

My name is Donald G. McCouch and I am Vice President of the Bankers' Association for Foreign Trade. I am also Senior Vice President and Deputy General Manager of Manufacturers Hanover Trust Company of New York. I am joined by the Association's counsel, Thomas L. Farmer and Gary M. Welsh of the Washington law firm of Prather Seeger Doolittle & Farmer.

The Bankers' Association for Foreign Trade ("BAFT") was founded in 1921 by a group of banks whose purpose was to expand their knowledge of international trade and to develop sound banking services and procedures in support of trade. Today, BAFT's voting membership of 147 U.S. banks includes virtually all of those having significant international operations. The Association also includes as non-voting members 95 foreign banks maintaining offices in the United States, and thus embraces many of the major international banks of the world.

BAFT is pleased to have this opportunity to testify in support of the several bills pending before this Subcommittee to facilitate the establishment of export trading companies and trade associations, because the promotion and support of U.S. exports has been one of BAFT's fundamental priorities since its inception.

In my statement this afternoon, I would like to focus on the need for export trading companies in the U.S.

and the contributions which can be made by U.S. banking organizations to their success. In this regard, we support section 5 of H.R. 7310, which section parallels a provision of S. 2379 that we earlier supported in testimony before the Senate Banking Committee. We are also encouraged to see that, in his remarks upon introduction of H.R. 7230, Representative Bonker stated that he expected to offer amendments to his bill in subcommittee dealing with the involvement of financial institutions. I would also like to address more briefly certain antitrust, tax and other issues that have been raised in connection with export trading companies and export trade associations.

The Need For U.S. Export Trading Companies

The nub of our trade problem was aptly summarized by the Joint Economic Committee in its 1980 Economic Report:

> [I]t is not only the oil bill that concerns American policymakers.
>
> Nearly all other nations recognize the link between international trade and domestic prosperity. The United States has been slow to adjust to the competitive world of trade. We have tended to view foreign trade as a luxury rather than a necessity. In the meantime, the U.S. market has become the target of integrated, well-financed, and highly successful efforts by our competitors.

The challenge is thus clear. More U.S. firms must export and, to do so, they must be given the means to meet highly-sophisticated foreign trade competition. Legislation to facilitate the formation of export trading companies is directed precisely at these most crucial problems.

First, to involve more U.S. firms in exporting, they must be given both the opportunity and the means to export. Export trading companies will be able to provide to small and medium-sized businesses the export know-how and financial resources necessary to carry on a successful export business. It is these firms that most need the services of an export trading company. Through export trading companies, the members of BAFT are prepared to assist small and medium-sized U.S. firms to maximize their potential for exporting goods and services from the United States.

Second, to be competitive in export markets, U.S. firms must be relieved of the export barriers and disincentives that the U.S. imposes from within and which often only serve to benefit our competition and make exporting more difficult than it need be. Among the most important barriers are those which have artificially compartmentalized various segments of the export process and effectively blocked development of U.S. export trading companies in response to natural market forces. Legislation is thus needed to reduce or modify these barriers.

Included among these barriers to the formation of export trading companies are certain legal restrictions established over sixty years ago which have prevented U.S. banking organizations from participating in the development of U.S. export trading companies. In fact, we would call to the Subcommittee's attention the rather anomalous situation under present law, whereby a foreign bank doing business in the U.S. may invest in a foreign trading company that exports to the U.S., and certain types of U.S. banking organizations may invest in foreign trading companies that buy and sell goods abroad, but a U.S. banking organization may not invest in a U.S. export trading company that buys U.S. goods for the purpose of exporting them abroad. In other words, the line separating banking and commerce frustrates the development of U.S., but not foreign trading companies. For reasons I will shortly discuss, BAFT believes it is time to move that line to a point where it will do the most good for U.S. exports and the U.S. economy, without compromising more fundamental concerns about the separation of banking from commerce within domestic markets.

Third, it is vital to our future foreign trade growth to establish trading companies that can facilitate the joint export of U.S. goods and services. United States service industries are facing increasingly stiff government-supported foreign competition. An export trading company will be able to combine the talents of large and small U.S. firms producing complementary goods and services and put together a complete export package better able to meet both foreign demands and foreign competition. It will be able to export a complete textile mill, or complete construction project -- not just individual pieces of machinery.

The Contributions Which Banking Organizations Can Make to the Success of Export Trading Companies

In general, we believe the strength H.R. 7230 and H.R. 7310 is their reliance on the ingenuity, productivity and efficiency of the American business and financial community. Instead of mandating a particular form of trading company or imposing an inappropriate foreign model on U.S. industry, the subject bills leave it up to the U.S. private sector to develop what is likely to be a highly diverse group of trading companies -- some large, some small, some owned by a single firm, some jointly owned, some with bank participants, some owned entirely by nonbanking organizations, some formed around particular industries, and some formed for particular markets. The best way to improve U.S. competitiveness is by deregulating instead of regulating, by promoting rather than burdening U.S. business. We live in a highly competitive international environment and we must be prepared to modify barriers or restrictions imposed under vastly different economic circumstances that now only serve to frustrate our broader national interests. Among these restrictions are legal provisions which prevent U.S. banking organizations from investing in firms, such as U.S. export trading companies, that engage in export trade or n providing export trade services.

Rather than discuss these provisions at ength in my testimony, I asked our counsel to prepare a summary of the major legal restrictions and these re included in an Appendix to my statement. The estrictions derive principally from 1919 restrictions ncluded in the Edge Act, and they were based on a concern hat U.S. export trade might somehow become dominated by ne or two large trading companies involving a few ndustrial giants and the relatively few banks engaged t that time in trade financing. These restrictions hus bear little relation to today's highly competitive orld of international trade, and the internationalization of trade financing. In particular the days when a elatively few money-center banks did most of our rade financing are ancient history. As indicated by the cope of our membership, hundreds of banks -- both domestic and foreign -- are aggressively competing in trade financing across the country. This diversity and strength of bank competition is, or course, matched by an equally aggressive commercial export sector. The world has changed greatly since 1919.

We thus support section 5 of H.R. 7310 which would give Edge Corporations, banks, and bank holding companies the opportunity to invest in export trading companies, including firms that engage only in providing export trade services, such as a freight-forwarder. We recommend broadening banking organization investment powers to include export trade service firms, as well as export trading companies, because many banking organizations, including many smaller and regional banks, would like the opportunity to expand their range of trade services without necessarily having to invest in a trading company that buys and sells goods. This would thus enable banks to present to their customers a more complete, integrated package of services that would facilitate and promote exports. Moreover, with additional managerial and financial resources from a banking organization investor, many small export trade service firms would be able to expand and improve their operations.

Because the trading company concept is new to the United States, it is difficult at this time for me to generalize on the ways banking organizations may choose to participate in export trading companies. Some banking organizations may want to finance export trading companies and their customers but not take an equity position; others are more interested in investing in export trade service firms than export trading companies; and others are interested in investing in export trading companies, but may differ on the scope of participation they may find appropriate e.g., some are interested in joint ventures and others are interested in forming their own subsidiaries. Given this diversity of interest, we believe a flexible approach is most appropriate and would thus recommend against foreclosing any options at the present time, because trading companies must and will evolve in response to market forces, and banking organization involvement will be controlled through the existing bank regulatory framework. We thus strongly oppose provisions which would prevent banking organizations from acquiring, either singly or jointly, a controlling interest in an export trading company, and would prefer to see a minimum of restrictive statutory provisions. In this regard, we support section 5 of H.R. 7310 because it permits a full range of banking organization participation without unduly burdensome procedures or limitations.

In support of this recommendation, I would like to take this opportunity, to highlight a few of the important contributions which banking organizations can make to the success of U.S. export trading companies, and thus to the improvement of U.S. export performance.

First, the United States banking system reaches virtually every U.S. business, including especially small and medium-sized U.S. businesses. United States banking organizations can thus provide an important introductory link between trading companies and U.S. businesses seeking to export their goods or services. In this regard, U.S. banks already play an important role in introducing Eximbank, FCIA and other programs to businessmen throughout the country. Simply put, there is no better way to reach U.S. business than through the banking system.

Second, in today's world, the finance component of an export transaction is sometimes its most crucial element. A trading company must therefore be able either to provide or arrange for appropriate trade financing. Bank participation in a trading company will expand its capabilities to put forward realistic financing options.

Third, bank participants can help trading companies penetrate markets abroad and can provide U.S. export trading companies with the knowledge and experience crucial to meeting foreign competition. Many U.S. banks have substantial international networks that reach into every major export market and which form a tremendous reservoir of talent and experience for a trading company. For example, foreign branches and affiliates of U.S. banks have a detailed knowledge of local economic conditions, government policies, and business practices which would take a de novo trading company years to develop on its own, and which knowledge is crucial for competing abroad.

Fourth, permitting banking organizations to be linked with trading companies will better enable U.S. trading companies to compete with their foreign counterparts. It will also improve the ability of U.S. banks to compete both onshore and offshore with foreign banks. A number of foreign banks doing business in the U.S. are linked with foreign trading companies that also import from and export to the U.S. While these linkages are based overseas, they extend to the U.S., and greatly assist foreign trading companies in penetrating U.S. markets. If we permit foreign banks to own U.S. banks and to be linked with foreign trading companies that export foreign goods and services to the U.S., why shouldn't we permit U.S. banks to link with U.S. trading companies that export U.S. goods and services abroad? We believe we should, and that these linkages will greatly strengthen the competitive ability of U.S. banks, exporters and export trading companies in foreign markets.

While banking organizations can thus make a positive contribution to U.S. exports through participation in trading companies, BAFT and its members believe that there are legitimate questions concerning the scope of bank participation which have to be carefully considered. In general, we believe questions concerning the appropriateness of bank participation can be handled through the regulatory process. Nevertheless, we believe that it is appropriate to establish certain safeguards in the governing statute, and certain procedures which are desirable because they give banking organizations and the responsible agencies necessary guidance on how the law is, in fact, to be implemented.

To encourage and facilitate small bank participation in export trading companies, we believe only investments above a certain size need be subject to prior approval by the bank regulatory authorities. In this way, a small bank can participate without having to go to the burden and expense of filing an application with its regulatory authority. We would recommend drawing the line for prior regulatory approval at any investment which would give a banking organization majority stock control of an export trading company, or which would exceed 5 percent of the banking organization's capital and surplus. These limits, included in section 5 of H.R. 7310, appear both workable and prudent in our judgment. We also have no objections to provisions such as are included in section 5 of H.R. 7310 which would require a banking organization with an investment in a trading company to deal with such company and its customers on a strictly arms-length basis, since this clearly represents sound banking practice.

These types of limitations, when combined with the banking agencies' existing regulatory, supervisory, and examination powers and existing legal restrictions, such as on loans to affiliates, ensure against any breach of the domestic line separating banking from commerce. Our members view banking organization involvement in export trading companies solely as an opportunity to expand their profitable involvement in assisting U.S. exports throughout the world, not as a vehicle for investment in domestic nonbank industries. In this regard, U.S. banking laws have always permitted U.S. banking organizations greater freedom in their international and foreign activities, particularly in support of U.S. exports, because it has consistently been recognized -- even in 1919 -- that additional powers are often needed to compete effectively abroad.

In summary, BAFT believes it is in the national interest to make the knowledge, expertise, and resources of our banking system available to our own trading companies -- our own exporters and their customers. We believe that it is in the national interest to give banking organizations the chance to participate in an initiative aimed at strengthening the nation's economy and providing real benefits to its citizens.

Antitrust Considerations

At the outset, I would like to say that BAFT supports H.R. 5061 and we would urge the Subcommittee to extend its benefits to export trading companies. It is important that service industries be extended the benefits of the Webb-Pomerene Act and that the Act itself be reshaped to give such associations more antitrust certainty in their joint operations overseas. We think it of equal importance that trading companies be given the opportunity to obtain a Webb-Pomerene exemption for their export trade activities, as provided in section 6 of H.R. 7230 and section 9 of H.R. 7310. Substantial uncertainties in this area could dissuade many banking organizations from participating. The preclearance certification procedures and consequent protections that would be available under H.R. 5061 would thus be particularly helpful. We would recommend, however, that not only export trading companies but also export trade service firms owned in whole or in part by banking organizations be made eligible for the exemption.

Tax Considerations

Since DISC may be our only export tax incentive under MTN, we support provisions, such as are included in section 10 of H.R. 7310, that would afford export trading companies DISC eligibility. In particular, we support section 10(a) of H.R. 7310 which would make it clear that bank ineligibility for DISC would in no way affect DISC eligibility for export trading companies with a bank shareholder.

Eximbank Involvement

Section 7 of H.R. 7310 would also give the Export-Import Bank the authority to use its credit and insurance resources in support of export trading companies. While we believe that export trading companies should have the same access to Eximbank as other exporters, provisions for Eximbank financing and guarantees for start-up costs and operating expenses and guarantees for export inventories appear to run counter to Eximbank's basic purpose of providing export financing, since they would require it to become involved in domestic credit operations. Limiting Eximbank involvement to guarantees of export accounts receivable would thus seem more in line with its traditional functions. Such an Eximbank program could be useful in providing export financing to de novo or small exporters and, in particular, export trading companies which will be new types of firms with, for the most part, no established track record. It thus may stimulate new export trade and export financing, particularly by smaller banks for smaller and medium-sized exporters, that would be ultimately taken over entirely by the private sector.

Export Promotion Functions

Finally, we would like to express our support for provisions such as section 4 of H.R. 7230 and section 4 of H.R. 7310 which would direct the Commerce Department to encourage the formation and facilitate the development of export trading companies. The Commerce Department referral service provided in these sections could be extremely helpful, since often the biggest hurdle facing a small exporter is locating the services he needs. The great advantage of a trading company is that it will give him one-stop service. We also believe that states as well can play a positive role in promoting the development of export trading companies, and thus support the thrust of section 5 of H.R. 7320 and section 8 of H.R. 7310. State ownership of export trading companies is a more difficult issue since government-owned corporations often have special legal or other advantages in their operations. In this regard, we believe private and State-owned trading companies should be required to operate on a level playing field that does not give State-owned firms any special advantages, and that guards against any possible favoritism.

We also support the Task Force provided for in section 7 of H.R. 7230 because we believe that the newness of this concept in the U.S. requires careful oversight to ensure the objectives of export trading company legislation are being realized.

CONCLUSION

I would like to conclude by expressing our support for passage this Congress of legislation providing for the establishment of export trading companies with opportunities for effective and meaningful participation by U.S. banking organizations. My colleagues and I would, of course, be pleased to answer any questions you might have. I would also like to take this opportunity to express our willingness to work with your staff on any aspects of this legislation where our input may be of assistance.

SUMMARY OF BANKING
ORGANIZATION INVESTMENT
PROHIBITIONS RELATED
TO EXPORT TRADING COMPANY LEGISLATION

INTRODUCTION

There are three basic investment prohibitions that are relevant to banking organization participation in export trading companies: (1) paragraph 6(c) of the Edge Act (12 U.S.C. § 615(c)) which prohibits an Edge Act Corporation from investing in any corporation "engaged in the general business of buying or selling goods, wares, merchandise or commodities in the United States;" (2) section 16 of the Glass-Steagall Act which, except as permitted by law, generally prohibits a national or state member bank[1] from acquiring for its own account "any shares of stock of any corporation;" and, (3) section 4(a) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(a)), which, with certain exceptions, generally prohibits a holding company from engaging in nonbanking activities or from owning or controlling shares of any company that is not a bank. These provisions, among others,[2] implement the general policy of separating banking from commerce within the United States.

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[1] Section 5136 of the Revised Statutes directly applies the prohibitions of section 16 to national banks (12 U.S.C. § 24, p. 7); state member banks are subject to such provision by reason of section 9 of the Federal Reserve Act (12 U.S.C. § 335).

[2] See also the Sherman and Clayton Antitrust Acts (15 U.S.C. § 1 and 15 U.S.C. § 8), section 5199 of the Revised Statutes limiting the amount of dividends payable by a member bank (12 U.S.C. § 60), and § 23A of the Federal Reserve Act limiting the amount of loans to affiliates (12 U.S.C. § 371c).

The type of export trading company envisaged by H.R. 7230 and H.R. 7310 would not be a holding company for managing investments in U.S. industrial or commercial enterprises -- the thrust of the prohibitions described above. Rather, it would be engaged principally in exporting and providing export trade services for unafiliated persons, and certain incidental importing and other activities necessary to carry on its operations. Nevertheless, any such company which, as part of its business, bought and sold goods in the U.S. as principal e.g., purchased goods from U.S. exporters for resale abroad or, in a barter transaction, took title to foreign goods for resale in the U.S., would appear to come within the literal prohibitions described. Section 5 of H.R. 7310 is thus necessary to clearly override these prohibitions in the case of export trading companies. It should be noted that section 5 otherwise leaves intact the general prohibitions described; it thus creates only a limited exception for export trading companies encompassed within section 5 of the bill.[3/]

The following discussion briefly analyzes such a limited exemption for export trading companies in light of the purposes of the prohibitions described and other

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[3/] The definition of export trading company in section 5(12) is not limited to a company that buys or sells goods. A firm that only provides export trade services is also made an eligible investment. While it is possible the Federal Reserve Board might permit an investment in such a more limited trade service company for an Edge Corporation or bank holding company, a member bank would still need specific statutory authority to make such an investment.

exemptions currently provided -- especially for overseas operations and foreign bank holding companies.

EDGE ACT PROHIBITION

Paragraph 6(c) of the Edge Act was a compromise between House and Senate versions of the original Edge Act legislation. At the time of passage of the Edge Act in 1919, there was a concern that the broad investment powers granted Edge Corporations could be used by the relatively few large banks then engaged in trade financing to buy up and control U.S. and foreign commercial concerns, and in the process, form cartels which could fix the prices of commodities in the United States. While these concerns appear unsupported by the legislation's more basic purpose of establishing a means of payment for U.S. exporters, both House and Senate bills contained restrictions designed to prevent any such untoward results. The Senate bill provided that an Edge could only invest in a corporation that did not transact any business in the U.S. except such as was, in the Federal Reserve Board's judgment, incidental to its international or foreign business. In this way, Edge Corporations could not be used to acquire interests in U.S. industrial or commercial enterprises. The House wanted to go even further, as it would have prevented Edge Corporations from investing in any corporation that was not principally engaged in international or foreign banking or financial operations. The House version was rejected, however. Instead, the Conferees took the Senate version and added to it the specific prohibition against investing in any corporation engaged in the general business of buying or selling goods, wares, merchandise or commodities in the U.S. that is now in paragraph 6(c). The Conference Report explained the Committee's action as follows:

> Most of the amendment inserted by the House is stricken out as unnecessary and possibly hampering to the successful operation of the financial corporations in competition with similar foreign institutions and with the great private banking firms. In certain South American countries control of trading companies through ownership of stocks is declared to be necessary, and there are certain other countries where American goods, raw materials, or machinery can not be safely sold on long-term credit unless a voice in the management of the properties during the period of the credit can be obtained. (Emphasis added) 4/

Given the sensitivity of his House colleagues to this provision, Chairman Platt of the House Banking Committee took great pains to lay out the reasons for the compromise on the House floor:

> Amendment numbered 19 has reference to the holding of stock of other corporations, and has been so amended in conference as to permit a finance corporation organized under this section to own stock in other corporations which may be engaged in buying and selling commodities outside of the United States, as well as stock in banking or finance corporations outside of the United States. In view of this extended power the committee decided to strengthen the paragraph prohibiting attempted monopoly or the control, or fixing of prices by inserting the words 'directly or indirectly,' so that no corporation organized under this act

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4/ H.R. Rep. No. 66-473, 66th Cong., 2d Sess. 3 (1919).

> could control or fix prices through stock ownership in any other corporation, or exercise any monopolistic control. This, of course, has reference to the United States.
>
> Probably the words 'United States' ought to be in the amendment, as we are not particularly concerned as to what these corporations may do in other countries so long as they comply with the laws of these countries. *It seemed necessary to give the right to hold stock in corporations doing a trade business in certain South American countries. It has been found unsafe to loan money to trading corporations in some places without some voice in their management. We have been told also that in certain European countries it is unsafe at present to loan money unless there was some element of control in the operations carried on. We do not want to hamper the institutions to be incorporated under this section so that they will be unable to compete with great private banks like J.P. Morgan & Co., Lee, Higginson & Co., who are not hampered. Everything we have permitted is under the regulation of the Federal Reserve Board. We have put in restrictions against monopoly and any practice that could be deemed against good banking and good finance*. (Emphasis added) 5/

It thus seems clear from both the language and legislative history of the Edge Act that an Edge Corporation may invest in a foreign trading company that buys and sells goods outside the U.S., in particular, where such may be necessary or desirable to protect a long-term credit.

5/ 59 Cong. Rec. (Part 1) 49-50 (1919).

Notwithstanding this broad investment power overseas, the Federal Reserve Board in its implementation of the Edge Act has generally restricted Edge Corporations to making non-controlling, portfolio-type investments in foreign commercial or industrial concerns.[6] Most Edge Corporations have made such investments as part of a larger financing transaction -- *e.g.*, the Edge Corporation in extending credit has received shares or options to acquire shares at attractive prices, which arrangements may have supplemented a lower interest rate. Most often these investments have been made in South America and developing countries.

The Board has, in general, strictly construed the prohibition in paragraph 6(c) against acquisitions of firms that buy and sell goods in the United States. For example, in 1976, the Board denied an application by an Edge Corporation to acquire less than one percent of the voting shares and approximately 6 percent of the nonvoting shares of a Brazilian firm which had a wholly-owned sales subsidiary in California.[7] However, in 1967, the Board issued an interpretation permitting an Edge Corporation to have a noncontrolling interest in a combination export manager that obtained foreign orders for its U.S. clients or, against firm orders from abroad, itself purchased merchandise from them and reinvoiced it for export. The Board found the permissibility of this investment to be a "close question" under paragraph 6(c), basing its decision largely on the fact that the export manager in question appeared to bear no market risk in its activities.[8] A later Board decision involving a foreign bank holding company investment in a similar type of firm casts serious doubt on the remaining vitality of this 1967 interpretation.[9]

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[6] *See generally* § 211.5 of the Board's Regulation K.

[7] *See* Board letter of August 9, 1976 to Chase International Investment Corporation concerning Acos Villares, S.A., Sao Paulo, Brazil.

GLASS-STEAGALL ACT PROHIBITION

The provision in the Glass-Steagall Act prohibiting member bank investments in corporate stock was aimed principally at abuses that were perceived to have occurred during the period which led up to the Depression: (1) the growth of unregulated "bank affiliates" which devoted themselves to underwriting operations, stock speculation, and maintaining a market for the banks' own stock;[10] (2) excessive bank corporate investments which both fueled stock market speculation and undue credit expansion;[11] and (3) unsound investments, which with the collapse of the stock market in 1929, contributed to bank failures.[12] It thus seems clear that this prohibition was aimed at some rather fundamental abuses that occurred during this period.

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[8] 1967 Federal Reserve Bulletin 752; 12 C.F.R. § 211.103 (1979).

[9] See discussion infra p. 11.

[10] S. Rep. No. 72-584, 72d Cong., 1st Sess. 9-10 (1932).

The prohibition is, however, not absolute; it of course, excepts investments permitted by other provisions of law. This is consistent with the general thrust of the statute that there should be a "careful restriction of investments," not an absolute ban.[13] Bank investments in Edge Act Corporations are thus excepted from this prohibition; Edge Act Corporations themselves are not covered by the Glass-Steagall Act. In 1966, Congress created an additional international exception from this prohibition, by giving member banks the authority to invest directly, not just through Edge Corporations, in the stock of foreign banks not engaged, directly or indirectly, in any activity in the United States except such, as in the Board's judgment, shall be incidental to the international or foreign business of such bank.[14] The provision was intended to avoid the necessity of setting up an Edge Corporation to invest in foreign banks, and, generally, to give U.S. banks the means to compete effectively abroad by acquiring an interest in a foreign bank, in particular where such may be the only means of entry into a foreign market e.g., a country which does not permit branches of foreign banks but does permit investments in local banking institutions.

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[11] S. Rep. No. 72-584, 72d Cong., 1st Sess. 6, 8 (1932).

[12] *Id*. at 11.

[13] *Id*.

[14] Section 25 of the Federal Reserve Act, 12 U.S.C. § 601.

In general, it can be said that Congress has permitted such exceptions from Glass-Steagall and other domestic banking prohibitions where greater freedom abroad is deemed necessary to be an effective banking competitor. H.R. 7310 seems clearly designed at the same ends -- permitting U.S. banks to make limited investments in export trading companies in order to improve the competitive position of U.S. banks and exporters in foreign markets.

BANK HOLDING COMPANY PROHIBITIONS

As one expert commentator has summarized it,[15] the main reasons cited by Congress in enacting § 4 of the Bank Holding Company Act (BHCA) are:

> (1) a holding company might use its banks to allocate available credit on bases other than the creditworthiness of the borrower -- for example, by preferring customers of the banks' affiliates in the holding company or by denying credit to competitors of the banks' affiliates; and
>
> (2) a holding company might impair the soundness of its subsidiary bank

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[15] Heller, "Handbook of Federal Bank Holding Company Law" 158-9 (1976).

by causing the bank to make funds available to nonbanking affiliates or to their customers.

Section 5(e)(1) of H.R. 7310 is precisely addressed to these concerns because it prohibits any banking organization holding voting stock or other evidences of ownership of an export trading company from extending credit or causing any affiliate to extend credit to any such export trading company or to customers of such trading company on terms more favorable than those afforded similar borrowers in similar circumstances.

As in the case of Edge Corporations and member banks, Congress has provided in § 4(c)(13) of the BHCA a specific exception from the domestic prohibitions of § 4(a) for the international and foreign investments of bank holding companies. In general, the Board permits bank holding companies to make the same types of foreign and international investments that can be made by Edge Corporations.[16] Thus, it is possible that a U.S. bank holding company could acquire an interest in a foreign trading company (see discussion supra pp. 4-6). A 1974 decision involving a foreign bank holding company, however, seems to make it clear that the Board, under authority of § 4(c)(13), would not permit a bank holding company to invest in a U.S. export trading company. In that case, the Board required a foreign bank holding company to divest its interest in a U.S. export management company which arranged for the sale of U.S. exports through a foreign distribution system. The company took nominal title to the goods being exported and invoiced its foreign agents and distributors at the manufacturer's cost plus a commission and interest on any credit extended. In essence, the company functioned as a customer's export department. The Board required divestiture because it concluded that the public benefits of promoting U.S. exports were outweighed by the general policy of separating banking from commerce.[17/]

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[16] See § 211.5 of Regulation K, and definition of "investor" in § 211.2(j) of Regulation K.

While neither a U.S. nor foreign bank holding company would thus seem able to own a U.S. export trading company, save for a portfolio investment of five percent or less,[18/] a foreign bank holding company may have an investment in a foreign trading company that exports to and imports from

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17/ Board Order of January 9, 1974 Disapproving of Lloyds Bank Limited's Retention of Investment in Drake America Corporation. 1974 Federal Reserve Bulletin 59.

18/ See § 4(c)(6) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(6)) which permits bank holding companies to acquire no more than five percent of the shares of any corporation.

the United States. In the early 1970's, the Board examined the relationships between Japanese banks and Japanese trading companies and their customers and determined that these relationships did not offend the control standards of the BHCA.[19] Thus, a number of Japanese banks which are linked with Japanese trading companies and their customers through interlocking stock ownership both own U.S. banks and finance the operations of such trading companies and their customers in the U.S. -- such financing generally being provided, however, through separate U.S. branches and agencies of the Japanese parent bank.

In addition, under § 2(h) of the BHCA, as amended by section 8(e) of the International Banking Act of 1978, it seems clear that a foreign bank can own even a controlling interest in a foreign trading company that does business in the U.S., if (a) the foreign bank is itself principally engaged in the banking business outside the United States, (b) the foreign trading company is principally engaged in business outside the U.S. and (c) any U.S. affiliate of the foreign trading company is engaged in the same general line of business of the trading company or in a business related to the business as the trading company. As set forth in the September hearings on S. 1663, there are a number of foreign banks doing business in the U.S. which, in fact, have affiliation with foreign trading companies.[20]

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[19] Board Orders of December 1, 1971 concerning Dai-Ichi Kangyo Bank, Ltd., Mitsubishi Bank, Ltd., and Sanwa Bank, Ltd., 1972 Federal Reserve Bulletin 49.

Respectfully submitted,

PRATHER, SEEGER, DOOLITTLE & FARMER

By: Gary M. Welsh

May 22, 1980

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[20] Export Trading Companies and Trade Associations, Hearings Before the Subcommittee on International Finance of the Committee on Banking, Housing & Urban Affairs, United States Senate, 96th Cong., 1st Sess. 110 (1979).

Mr. **Bingham**. Thank you, Mr. McCouch. I appreciate your summarizing your statement.

Mr. Chew, will you proceed?

STATEMENT OF RALPH H. CHEW, PRESIDENT, CHEW INTERNATIONAL CORP., AND PRESIDENT, NATIONAL ASSOCIATION OF EXPORT COMPANIES

Mr. **Chew**. Good afternoon.

I am the president of an export trading company, an American export trading company, an entity which today has been deemed not to exist. Our organization has 150 members of about some 800 export management companies, which are the elite of the 3,000 to 5,000 export trading companies in the United States.

To some extent there is a semantic confusion between export management companies and export trading companies that has made Hay Associates' study and many of the gentlemen who testified today unable to understand the nature of the peculiarly American export trading company which I represent. Our companies are export trading companies according to the definition of this bill. Senator Stevenson himself has finally come to understand this.

I am also president of my own export trading company that does $50 million worth of exports. We are a small company, but do business in 80 countries. We are the best in my field. One of my competitors sits here, and he will speak later.

No member of our organization has been called upon to testify at any step of this legislation concerning export trading companies.

Mr. **Bingham**. Well, you are here today.

Mr. **Chew**. Until today. In all those Senate hearings on all the bills which have been talked about today, no American ETC from our organization testified.

Mr. **Lagomarsino**. The Senate is another body.

Mr. **Chew**. I understand that, and I submit that Congress, which is supposed to be closer to the commercial life of this country, perhaps, than the Senate, can appreciate the situation. We are small companies. The thing that this bill fails to understand and fails to deal with is why our export trading companies, American export trading companies, are small companies. If there are going to be bank-owned trading companies, they will have to deal with these same structural limitations that have made our companies not develop into large companies. The grain exporters, of course, are exceptions as they are large trading companies.

Our association represents companies that do billions of dollars. We have tens of thousands of employees. Our association, while it does not oppose this legislation, thinks that it would be much more sensible if the House of Representatives were to include incentives and the removals of disincentives which would make existing export trading companies and any kind of new bank-owned trading company more viable organizations.

I would like to comment that the testimony about the United States being such a total flop in exporting is another ignorant statement. U.S. exports have quadrupled in the last 10 years to $200 billion. It is our oil prices that have caused the adverse balance of trade. The

United States is a very capable exporting country. It does not need a radical solution. Just because we have an adverse balance of trade based upon the oil prices, we should not go into this thing and put the banks, like "a fox among the chickens," into the export trading company business. There is no sensible reason for banks to control export trading companies. I fear the prospect of negotiating my company's crucial credit lines with banks who want to buy me, or who want to buy my competitor. The legislation says that they must give me the same terms and conditions as they give their own trading company, but that is a totally unenforceable clause. There is so much discretion in any banking loan that there is no way you can force a bank to loan to us on the same conditions as to their own ETC.

EXPORT FINANCING

But nevertheless, our association does not oppose this legislation because it does recognize finally the importance of export trading companies to the balance of trade, to our Nation's exports, and because it does focus on the most serious problem of export trading companies, which is financing export business.

As was touched on earlier by Mr. Rees, the American banks will lend one and a half, two, or three times the capital of a trading company. Mitsui borrows 50 times its capital. The financing is done for export trading companies in other countries on a transactional basis. An accounts receivable loan in the domestic market is based on a promise to pay. An accounts receivable loan overseas is based upon a negotiable document; the bank receives and in effect owns the merchandise, and the bank is a conduit for the payment.

The banks should have a mechanism, perhaps an export window at the Fed or something, perhaps with somewhat less disastrous interest rates than we have had to face, but if our export trading companies are to grow, as they have been growing—my company has grown 20 times in the last 10 years—there must be export financing like that given to other countries' export trading companies, perhaps at interest rates an average of the world or whatever.

I have some specific suggestions, some of which I discovered last night in reading the 200-page Hay report, which I had never seen before. I am the president of the Export Traders Association and I have never seen the Hay report on the feasibility of the use of export trading companies in export. But it turns out that some of the recommendations which I have made on my own, or my association has made, have been included in the Hay recommendations.

One is most export trading companies around the world are paid brokerage on the ocean freight and U.S. ETC's must get this brokerage, also. This may seem like a small thing to you gentlemen, but that brokerage is very often what enables Mitsui to buy it for $10 and sell it for $9 whereas we have to buy it and mark it up, because they make the money on the ocean freight. The Hay report recommended that the export trading companies, our companies, should be allowed to earn this brokerage. There is a very strong constituency of the companies which are able to earn the freight brokerage which are the forwarding companies. The FMC promulgated these regulations to protect the freight forwarders against the giant American manufacturing companies so that they would be able to perpetuate themselves. They lumped our trading companies in with the manufacturers. Export trading companies the world over are able to earn that freight brokerage. It is essential, if you are going to have viable U.S. export rading companies, that they be allowed to earn this freight brokerage.

Export trading companies—and this is also recommended by the Hay report—should be allowed to earn commissions on marine insurance in the transactions. Every foreign trading company can do this.

Export trading companies should be allowed to operate as NVOs. This is a type of nonvessel owning operator which enables the trading company to get special freight rates.

Mr. BINGHAM. Excuse me, Mr. Chew, but these points you are making now are not included in the bills.

Mr. CHEW. That's right.

Mr. BINGHAM. And you are suggesting they should be in the bill?

Mr. CHEW. That's right. The bill ignores completely existing American trading companies. This is a remarkable feat for a bill that is supposed to be dealing with export trading companies.

Mr. BINGHAM. Is that true of all the bills? There are a number of bills.

Mr. CHEW. We have only been able to study the Senate bill, the so-called Stevenson bill, and H.R. 7230. I just received a copy of H.R. 5061, which I understand is somewhat similar to part of the Senate bill, but I have not had a chance to study it.

BANK CONTROL

But we are not opposing banks' involvement in export trading companies because it does recognize the importance of export trading companies. We don't think there is any necessity that banks should own xport trading companies.

Mr. BINGHAM. When you say own do you mean majority ownership?

Mr. CHEW. Control.

We think that majority ownership would be a dangerous thing. We don't have an opinion about partial ownership, but it seems to us to be a rather radical way to deal with our problem, which is our balance of trade, which is not caused by the inefficiencies of our export operaion but by the oil situation. We are contending that if there is going o be legislation concerning export trading companies, that it should foster existing export trading companies as well as any new kind of xport trading companies. That is the position of our association, and we recommend these additions to the bill that I have mentioned. I realize they are complicated, but we have tried to make an earnest effort to make your export trading company bill result in workable export trading companies. It is our business. We know how to do this.

ANTITRUST

Mr. BINGHAM. Do you feel that any change is needed in the antirust laws or the Webb-Pomerene Act?

Mr. CHEW. I have very little experience with the Webb-Pomerene Act. I know about a couple of associations in New York. Everybody is very shy about the limitations of it. The law is written so a lawyer cannot say "no, you will not get in trouble." Legislation that requires you to go to your legal department and say, "will I get into trouble if I do this," how can the legal staff of a corporation say "no, you will not get in trouble." That is the essence of the Webb-Pomerene's problem, I think.

Mr. BINGHAM. In your activities up to now, have you felt inhibited by the antitrust laws?

Mr. CHEW. There is no question, sir, that the inhibitions are that the American commercial world is very well trained in compliance with the antitrust laws, in spite of what Congress may think. The executives of most American corporations have learned in their training in their corporations to comply with the antitrust laws. It is a difficult case for us to convince them that many of those antitrust laws do not apply internationally, Robinson-Patman price discrimination, for example, and other regulations.

We are an export trading company. We work for many different manufacturers. We have a problem that in order for us to compete we must earn commission from the companies that we buy from. Many companies have trouble with this because of Robinson-Patman interpretations. I would say that it was a problem of persuasion. I think that the language exempting many kinds of export transactions from antitrust is not clear, that antitrust does not run to international trade. But it is an inhibiting thing.

Our contention is that the American export trading companies have not grown up to be an important part of the American economy because there are all these disincentives and prejudices to them, and rather than approaching it, or perhaps in addition to approaching it by allowing banks to buy into this field, which is a very great change from any way that banks have been treated in this country for a long time, the legislation should deal with the existing American trading companies, which are a viable tool. They are small, but they are only small because of all these disincentives, because the financing is not available and because of the prejudices that exist against them.

I must say that the talk I have heard today about the banks' offices in Hong Kong and so forth being useful to the export trading company is not impressive and is naive. It has been a long time since I have used one of the overseas branches of one of my banks for anything. They are in the banking business. Perhaps they can learn the trading business. Mr. Ducat is here because he represents a group of our organization that is extremely opposed to bank ownership.

IMPORTANCE OF EXPORT TRADING COMPANIES

I would like to say that there are other disincentives that are built into this export structure that is disadvantageous to the American export trading companies against American manufacturers. The structure generally is that companies like ours, American export trading companies, are crucial to the project of putting the American manufacturer into the export business. This is our major function. Eventually the American manufacturer, because there are no structural advantages to our trading companies, because we do not have NVO rights, because we cannot earn ocean freight brokerage, because we cannot earn commissions on insurance, because there are no advantages for us at trade shows and other Government programs, eventually the merican manufacturer will set up his own export operation because e has no structural incentives to continue using trading companies.

So our companies exist to put American manufacturers in the exort business.

Part of my written testimony deals with ideas whereby this part of ur function, putting American manufacturers into the export busiess, could be encouraged because it is a very difficult thing for our ompanies to undertake the enormous expenditure and effort to put a ew export manufacturer's product into export because we may work or only 10, 15, 20 years, and the payout in this business is a long, long ime. That kind of effort on our part, on the part of our companies, f course, is the future of our companies, but we remain small companies because we bring these manufacturers along and then lose them ecause we have no structural advantages.

So, if it has been decided by the wise people who have analyzed ur export field—these wise people who have overlooked the existence f American export trading companies—that export trading companies are to be an important part of the future of American export, ncentives will be necessary for those companies to be viable, given he prejudices which are built into the system. For example, the FCIA, 'oreign Credit Insurance Association, which underwrites credit and olitical risk, is prejudicial to export trading companies in two or hree different ways which are in my written testimony. If export rading companies are to be viable, this will have to be remedied.

The use of trade shows around the world is an important part of he introduction of new products. An export trading company in the Jnited States is actually limited by U.S. Government policy as to he number of new export manufacturers that can exhibit in a U.S.-ponsored trade show overseas.

Mr. Bingham. Why is that?

Mr. Chew. Because the American manufacturer who will be in the ext booth exhibiting one product will complain about the export rading company in the other booth exhibiting 6 or 10. I have managed o personally get the Department of Agriculture to eliminate that. Ve now can exhibit a number; but Commerce continues to limit us.

Ours are small companies primarily because the financing is not vailable to us on a transactional basis. If we are shipping Mitsui in apan on sight draft a $5 million transaction, and we only have a 500,000 balance sheet, we cannot finance that transaction with an merican bank. It is just crazy.

The American banks who are now describing themselves as intersted in getting into the international field are not qualified to finance xport traders properly. Perhaps if they own trading companies they ill learn how to.

I will stop here. I would be pleased to answer your questions.

[Mr. Chew's prepared statement follows:]

PREPARED STATEMENT OF RALPH H. CHEW, PRESIDENT, CHEW INTERNATIONAL CORP., AND PRESIDENT, NATIONAL ASSOCIATION OF EXPORT COMPANIES

My name is Ralph Chew - I am president of the National Assoc. of Export Management Companies(and Export Trading Companies,)NEXCO, and also president of an Export Trading Co., Chew International Corp., which is based in the World Trade Center in New York. Our company has been in business for many years & specializes in exporting agricultural products and processed foodstuffs, although we also have divisions in other fields.

NEXCO is the association in the United States for independent export trading and export management companies. We have 136 members from what we estimate are over 800 qualified export management companies and perhaps 3,000 export trading companies.

Myself and our Association have ambivalent feelings about the Stevenson or Export Trading Co. bill.

The bill does recognize the importance of Export Trading Companies, which have historically been a much larger part of the international commerce of other nations than has been the case in the United States. Our existing America Export Trading Companies are usually small companies, although some of them export $50 to $150 million and the grain traders are giant exporters. This bill seems to ignore our companies and is based upon a lack of clear understanding of the reasons our economy has not produced giant trading companies like those in many other countries.

Any legislation intended to foster and develop American trading companies should concentrate on first understanding why our indigenous, native, American version of the international trading company is often small and how it can be made bigger and better.

Our company has been in business for many years, and I have been running it for about 20 years. It is a family company. We do business all over the world.

Export Management companies like ours often work for a group of manufacturers in a similar field, that have non-competing products, and we tend to specialize in a type of product or product category or field. Some export management companies also specialize regionally; we try to provide worldwide sales coverage. Our company is organized regionally; our Regional Managers, who are really salesmen, travel their markets, know their customers, their market restrictions and opportunities, and return to the New York office to handle the problems of their customers and our principals or suppliers. Our company office in New York in the World Trade Center, includes all the necessary services of a International Sales Dept. We often compare ourselves to the International trading division of a multinational, which would tend to be a separate profit center, as are we. Our suppliers, principals and manufacturers normally allow us a commission on sales and/or a markup on the goods we buy and ship. We purchase products from our manufacturers on terms which partially help us on financing our Accounts Receivable. We have sixteen languages, over 105 employees, 21 of them in New York. We have a fully staffed Credit Department which also handles collections and bank relations, a very difficult part of our business. We have a Traffic Department, communications center, display and conference rooms, as any sales office should.

Our major function and concentration is sales. We spend $200,000 a year on travel and over $125,000 on communication, such as telexes, cables, overseas phones, etc.

Often we will work for a manufacturer for a period of time, 5, 10, 15 years, starting or expanding exports. We normally have short-term contracts. Some times we work for a manufacturer for many years, but there is a pattern in our industry that the Export Management Company takes the manufacturers products international and then loses all or part of the business to the manufacturer's staff when they set up their own export operation. Thus we are the starters of exports for many U.S. products.

Our companies are often small, many are privately held, although some of them have in recent years been purchased by foreign trading companies and foreign banks, which tend to appreciate the nature of trading companies more than the American commercial world does.

Our companies are small in the U.S. commercial world for several reasons. One often cited is because of the structure of industry in this country; many larger companies manufacturing products suitable for export, (although this does not seem to preclude the Japanese manufacturers from taking advantage of their trading company services.) Secondly, but most importantly, because we are not a trading country, the resources of our banking world are not available to ETC'S except in rather awkward balance sheet financing of Accounts Receivable. There are few special overseas financing programs for products of the nature we export, although the Eximbank programs for financing major medium term sales like airplanes and so forth seem well developed. For the shipments of agricultural commodities and processed foodstuffs and the products our Association's members tend to deal in, electronic equipment, safety equipment, photographic equipment, auto parts, hardware, it is extremely difficult for us to obtain the bank financing through the conventional channels which would enable us to offer terms similar to those offered by competing countries. It is a well known fact that American companies are weak in the area of offering terms overseas. U.S. Banks will lend only 3 or 4 times capital to trading companies; Japanese trading companies borrow up to 50 times capital. The financing of overseas receivables by U.S. banks is based on actual negotiable documents and ownership of the cargo. The banks actually collect the receivable so is further secured. Your bill must authorise banks to have extra authority to advance money on overseas shipments through trading companies with guarantees or whatever support the banks require. And I repeat that whatever financing the banks owning trading companies provide their own trading companies,must be available on the same terms for all trading companies. Otherwise your trading company act will be destructive and unfair.

This bill tries to deal with the real need for greater export financing, by allowing banks to own ETC. The giant banks will thus probably buy or form ETC's, which will have large credit facilities.

This competition could kill us quickly. Similar special credit facilities must also be made available to independent ETC's or this bill will destroy and disrupt more than it will create. The Senate bill does require credit must be offered by banks to all ETC's on the same basis, but there is little credibility in this clause.

This historical lack of unconventional or export financing or traders financing has limited the size of our ETC companies, as has the structure of the American commerce and industry.

However, there are other important biases against America ETC's; rules and regulations which have evolved over the years for various reasons.

It certainly is a disruptive thing that if my company sets up an export operation of a manufacturer, that after we build it to a certain size, we lose the whole thing to the staff of the manufacturer, because he has the resources and the tradition of managing his own sales. In our commercial world of overseas sales, American companies are infamous for the lack of consistency of export policy, for their changes in sales programs, even for their irrational behavior, and for their unfair treatment of the local distributors, as well as ETC's. There exist laws against this American style of doing business - Broker Protection Laws, Importer Protection Laws, in 18 different countries.

Some of these changes in policy result from terminations of relationships with export trading companies, which of course also do great damage to our trading companies. Therefore, some favorable systemic advantage to these trading companies is necessary for them to develop importantly.

You therefore have a present situation where the U.S. export trading companies, members of my Association, do not have the bank credit and are limited in their ability to help increase U.S. exports because of the structure of our economy and these biases against them. With the right kind of support, our own company could double or triple its business every year. We have good people; experienced, qualified, talented trained people; we are a resource that can be an important contributor to the expansion of U.S. exports and the balancing of trade.

We, therefore, suggest that besides recognition of export trading companies as important and the recognition of accounts receivable financing as a problem area, it is desirable that your legislation contemplate special support for existing export trading companies, and the correction or removal of existing biases, restrictions and limitations on American ETC's.

For example, the FCIA programs of insuring political and credit risk overseas are at the present time structured against the independent export trading company, and in favor of multipliers like banks or financial groups.

Of course, the FCIA's problem of the political interference in what should be commercial matters, like the elimination of disfavored nations from the FCIA credit insurance, injures both the manufacturing exporter as well as the export trading company, but as this credit insurance and political risk insurance perhaps is more crucial to the more modestly financed exporter, this policy of withdrawing FCIA coverage from nations who have earned our political displeasure is more harmful to export trading companies. The Exim bank participation in the FCIA program, in the area of political risk insurance,is also prejudicial to export trading companies, because whenever there is trouble in market country, which is just when we need political risk insurance most, we find the political risk coverage withdrawn.

We could pay higher premiums, commensurate with a higher risk, in problem markets like Lebanon or Salvador or Libya, but the Ex-Import Bank is unable to help us.

Our Association also feels that other discriminations against the export trading companies should be corrected, as follows:

I. For example, some 20 years ago, the Federal Maritime Commission's effort to protect the forwarding companies, which prepare documentation for shipment versus the large American corporations, ruled that only those forwarding companies could receive the freight brokerage which is customarily paid by steamship companies. ETC's were lumped with the manufacturers and are unable to receive this freight brokerage.

Fewtrading companies abroad are similarly prejudiced. We agree that

best copy available

forwarders must be protected against their clients to some extent, by the manufacturers not being able to receive the export freight brokerage, but the ETC's must get this brokerage to compete with trading companies around the world, and to have an advantage or strength in relation to the manufacturer.

II.ETC's should also be authorized to act as NVO's.

III.ETC's should be allowed to earn insurance commissions on Marine insurance.

IV. In a recent burst of economy, the U.S. government started to charge more for participation in export trade shows around the world to the participants to cover part or all of the expense. I remember one run-in I had with a gentleman for the OMB, who said they were evaluating the performance of the export development shows around the world on just how much revenue they could develop from the participation of the U.S. manufacturers or traders. It seems so obvious to me that the more important measurement would be the amount of trade which is developed on a short or long term basis. These trade shows are a Trade Development tool and therefore, ETC's should have a special status in these shows rather than being limited as to the number of principals whose products they can exhibit. The ETC should not be required to pay fees which compensates all the expenses of these shows, as it is a major function of ETC's to introduce new manufacturers to export, and trade shows are an important technique in this effort. A U.S. policy objective has been getting many U.S. manufacturers newly into the export business.

ETCs are traditionally a vehicle for a manfacturer to enter newly into exporting. We do not necessarily agree with Commerce's projections that there is a great volume of exports available to that large percentage of American manufacturers whose products are not exported. If a product cannot be sold widely throughout the U.S., it probably can't compete overseas, but there certainly are some such manufacturers whose products can be newly exported.

Incidentally, our association has been active in running with Commerce "match-making conferences", where the SBA or Commerce has rounded up a group of manufacturers, new or relatively new to export, and we have provided members of our organization to meet with these prospective exporters. One such meeting took place in New York yesterday.

Similarly, the World Trade Institute, which is part of the World Trade Center in N.Y., has received a grant from the Economic Development Administration to put about 100 manufacturers newly into export, and our Association is cooperating with WTI and many of these manufacturers, it is contemplated will work with our ETC companies.

V. Entering the export market is an expensive undertaking, even for an export management company or export trading company that specializes in the field of the manufacturer's product. We are limited in what we can do for the manufacturer, because the history and structure of the economy contemplates that we will be working for him during the developmental phase and, at a certain point, the manufacturer may contemplate taking over the export sales himself because, the way we are structured, there are few advantages for him to continue with the export management company, except the expertise they have provided.

Those troublesome export start-up expenses might be subsidized. It would make the ETC system work very much better if subsidies could be available to the manufacturer who employed an EMC to help cover expenses such as new personal, travel, publicity and advertising, shows, etc. Perhaps tax incentives; double expense deductions; by manufacturer and ETC.

Many export subsidies are purportedly limited by GATT, but in almost every type of subsidy, some countries seem to do better than the U.S. For example, Australia pays for exporting teams of their trading companies to travel around the world. Other countries will pay for individuals from overseas to come for training.

VI. A specific problem is the obtaining of performance bonds, primarily in the Middle East, and elsewhere. The way our economy is structured, such bonds are not readily available to ETCs. The Middle East will not accept insurance company performance bonds, but banks are unwilling to provide them, unless it can be on a balance sheet basis, which is therefore not available to many ETC's. Performance bonds are an export tool we need. I return again to the crucial problem of the export development effort of the export trading company with the new to export manufacturer. This is costly and, because there has to be a relatively quick payout, the manufacturer or the export trading company is limited to the amount of effort and, therefore, money he can invest in the export development effort. There have been a number of recognitions of this in Commerce programs, where there have been contemplated but seldom implemented subsidies for these crucial starting up years in this relationship. If these subsidies were available to the export trading company, and/o to the manufacturer who worked with an EMC or ETC, it would provide the kind incentive to use these ETC's to expand exports.

Similarly, at the end of the 5, 10 or 15 year period when the export management company is in a matured situation with developed sales, the manufacturer could continue this relationship in one form or another with his ETC, as it would be more economically feasable if there were some economic advantages for the manufacturer to continue

VII. There has also been a history of discrimination in Commerce and other governmental agencies against trading companies. We hold agencies with principals who have been actually advised by Commerce not to do business with export trading companies.

VIII. Our Association tries to police its membership, we have a code of ethics, and we have basic requirements for membership, but we are entirely voluntarily staffed, with a very minimal budget, and so there are great limits on what we can do to police our industry. Our trade association could benefit from specific programs to aid our industry; perhaps even a TEMPS program for such an association.

In conclusion, we regard this bill as a serious effort to deal with an important problem and resource - ETC's and export financing. But it must build on existing ETC's; not only create new ones, to make real sense. Our group is ready to cooperate with any export trade expansion efforts. We only hope we will not be destroyed in the process.

Mr. BINGHAM. Well, let me ask you a question. Now, in all the discussions I have had about this legislation, I have understood from the very beginning, of course, that there were export trading companies.

Mr. CHEW. I appreciate the invitation very much.

Mr. BINGHAM. We have mentioned some of the large grain companies as examples. It is not the thought of any of these bills to start something new, but rather to facilitate the growth.

Mr. CHEW. One of my members, Mr. Bingham, said it looks like Congress is trying to reinvent the wheel. That is the way it reads. There are no references to existing American export trading companies in the legislation.

Mr. BINGHAM. I have just been looking at my bill since you started speaking, and I think you have a very good point there. That is simply an oversight, because we all know that they are there, and what we are trying to do is to remove some of their difficulties.

Mr. Rees spoke at some length about the advantages of economies of scale. You speak of trading companies as being almost necessarily small. There is a conflict there. He says they could be larger, if you have certain provisions, certain facilities.

Mr. CHEW. There certainly are economies of scale, although trading is essentially one man talking to another man who is qualified and experienced, trained, and who has access to resources. There certainly are economies of scale, but when I do business with Marubeni, whom I sell three quarters of a million dollars to, I talk to one man. He has got access to tremendous resources, to facilities, and if my banks were internationally inclined, I might have the same financing resources he has without having to sell my company to the banks.

But we do not oppose the bill; your bill is a good framework to add in these extra incentives to the existing export trading companies, which will also apply to the banks. I think if the people who sponsored this legislation, the bankers' associations, knew much about the trading business, they would have gotten these provisions in there already.

So we are helping out the bank trading companies perhaps.

Mr. BINGHAM. Now, Mr. Ducat, you have a statement also. That will be incorporated in the record in full, if you want to summarize it for us.

STATEMENT OF J. B. DUCAT, PRESIDENT, BREWSTER, LEEDS & CO.

Mr. DUCAT. I will be very short. I do not have the educational background and experience to be effective in questions of this kind. I represent a plain Yankee peddler. I am a salesman who travels all over the world who is the president of a small, medium-sized export company.

BANK PARTICIPATION

What confused me today is the application of the title "Export Trading Company." Never is the English expression "exporter" used. Export office, export management office. We have 800 to 1,000 skilled, typically American, merchant offices in this country which sell tens of thousands of products to more than 100 markets worldwide. We have learned in the many years of our existence numerous details which make us understand world needs and habits. Based on my 35 years

with Brewster, Leeds & Co. banks, in my humble opinion, shoul not be permitted to participate in the ownership of export firm American banks should first be taught to finance the business of th American exporter.

American banks, in comparison to overseas banks, are most unco operative in helping us overcome our financial needs. We should ge more from FCIA—Foreign Credit Insurance Association—whic holds back supporting our efforts to give credits to foreign customers.

Many things I have read in great haste—I only became aware o this development last Saturday. I think many things are very good i there and should be followed through. I personally see one deep evi in this development: Permitting American banks to own part of expor organizations.

[Mr. Ducat's prepared statement follows:]

PREPARED STATEMENT OF J. B. DUCAT, PRESIDENT, BREWSTER, LEEDS & CO.

There can be no question that the fiscal integrity of the United States depends, to some considerable degree, upon a balance of its payments within th world. Without a balance of trade, as we have experienced in the past few years the entire economy of this country will continue to be adversely affected.

There is also no question that encouragement must be given to increased exports by the United States. However, the Senate bill with reference to expor trading companies in the Export Trading Company Act of 1980 is not the prope direction for this country to pursue at this time.

It is, therefore, imperative that the drastic proposals of the Export Tradin Company Act of 1980 must be carefully considered and weighted as to the effec on the commerce of the United States.

Before making any general comments, it is felt necessary and proper tha we put into proper perspective what the Senate version will do to the traditiona export traffic of the United States.

The guts of the act proposes a radical and far reaching change of directio for this country which could result in disastrous implications, causing the los of employment for many thousands of persons now in the export field, as wel as many thousands of jobs in manufacturing and the loss of millions of dollars in tax revenues. The implications and thrust of the act runs contrary to the entire traditional concepts on which the strength of this country has been founded. Traditionally, that is the belief that the small, medium-small and even medium-large companies are, in fact, the backbone of our economy.

With all the words contained in the act, the basic thrust, as proposed by the Senate, will have the effect of removing from the banking industry all of its restrictions as to becoming commercial enterprises as applied to export. The Act, in fact, would permit the banking industry to become exporters, controllin the direction of export by this country.

While the act recognizes State banks, small banks, large banks, the real effect is to place in the hands of the multinational banking community the control of and the future direction of our export endeavors. The act, in its own language, would permit "ownership of export trading companies by banks, bank holding companies and international banking corporations."

The restrictions imposed by the act on the banking community are, in reality, meaningless. For example, the restriction that a banking organization "may invest not more than 5 per centum of its capital and surplus in the voting stock or other evidences of ownership of an export trading company" is a meaningless restriction. When one speaks, as the banking industry does, in terms of billions of dollars, an inhibitor of a 5 percent limitation of capital and surplus, is ridiculous.

While no individual bank would necessarily control any one giant trading company, a consortium could well do so under the terms of the act with complete impunity.

Little faith can be placed in the administrative restrictions imposed by the act.

The complete exemption by the act of all export trade, export trade activities and methods of operation of any association "from the antitrust laws removes

completely any and all restrictions of the multinational banking industry from assuming the complete control of the export destiny and future of this country.

Since this committee is thoroughly familiar with the act as proposed by the Senate, no useful purpose will be served by a complete review of the act proposed. All of the act is not negative. The basic concern of Congress for the welfare of this country and its recognition of the absolute necessity of encouraging exports is long overdue. But this act as proposed is a disaster for those companies who are now engaged in the export field other than the commodity trading companies, and the large manufacturers and conglomerates which have their own export departments.

If indeed the large commodity trading companies, the exporters of agricultural products, the giants of industry, the multinational companies will be little affected by the impact of the Export Trading Company Act of 1980, we must look to the areas of export companies that represent the balance of our export trade from the United States.

By and large the balance of the manufacturing community, the small, medium and some large manufacturers in the United States have historically been serviced in the international market place by export management companies or export trading companies.

There are literally thousands of individuals or very small exporters who operate in the United States. However, for the most part these manufacturers are being serviced throughout the world by 800 to 1000 companies, and, these companies generate substantial sales of American products abroad. In volume of dollars, they handle billions of dollars of foreign commerce. Without exception, these 800 to 1000 export management companies or export trading companies are the product of American enterprise in its purest and most meaningful form. None of these companies are giants when compared to the large trading companies backed directly or indirectly by governments abroad but together they account for a substantial contribution to the stability of the export trade of the American manufacturer throughout the world.

These companies represent thousands of import companies throughout the world. They are by and large service companies selling and marketing American products throughout the world. Without them, there would be no exportation of many thousands of items manufactured in this country.

These 800 to 1000 companies represent the backbone of American export viability. Without them, many importers abroad could not exist.

It is these 800 to 1000 businesses and the countless individual smaller exporters who will be affected most by the proposed act.

The end result follows that with the destruction or substitution by large multinational trading companies owned and controlled by banks, that the importers abroad, who are dependent on them, will likewise be forced out of business.

The Export Trading Act of 1980 is clearly aimed at the ultimate destruction of the export management companies, export trading companies and individuals as a viable force in American commerce.

If this Act becomes law, few can survice. They do not have the capacity, the financial means, to compete with the monsters that Congress, by this act, would create. One by one they will be swept aside and destroyed by the giant trading companies which are the end product to be created by this act.

Through the years, the export community in the United States has grown by the effort of this segment of the export community.

Tens of thousands of jobs and many millions of dollars of tax revenue will be lost.

The overall effect on foreign importers will be catastrophic. It is nothing more than common sense to recognize that the emphasis by big trading companies will naturally gravitate to large firms abroad and, more importantly, to their own affiliates.

Ultimately, this country would find itself in no different position than other countries who have utilized the concept of large trading companies, backed either directly or indirectly by banks and government, where the small, medium or even large exporters of goods has no marked impact on the foreign trade of these countries. Fortunately, there is a difference between the United States and much of the rest of the world. This country has historically supported the smaller manufacturer. Here in the United States we have hundreds of thousands of small to large manufacturing concerns, manufacturing enterprises created and owned by Americans. Many of these would lose their market share abroad.

It is trite to say that we must all recognize that a real thrust should be mad toward an increase of export by the United States.

Many of the smaller manufacturing concerns will not be able to survive i a complicated financial world of today without turning to export. But it is n answer to providing necessary funds for increased export by turning the contro of billions of dollars of export potential of this country over to multination banks.

Of course, financing of exports should be made easier—of course, funds shoul be provided to further our position in the world market—but it is our contentio that this goal would best be served by building on the present existing structur of the traditional export management company as well as the export tradin company.

Moves have been made by our Government offices to create more interest i export by the smaller and medium sized manufacturer who may or may not b able to handle this directly and we object to the fact that our Governmen sources very rarely promote the use of an export management company or a export trading company.

The accumulated knowledge of the tens of thousands of people today engage in export would be the best basis for a worthwhile expansion.

Bringing the entire matter directly into a realistic and common sense perspective, the Export Trading Company Act of 1980 is nothing more or less than a congressional subsidy of the large multinational banking industry which wil swallow the independent export management companies, the export tradin companies and the thosuands of individual exporters bit by bit until they ar only part of Americana history.

Mr. **Bingham**. Are you referring to majority ownership, or does your comment apply to even 10 percent?

Mr. **Ducat**. I do not want banks to become exporters. I want them to earn a lot of money by helping us exporters do the business. Their commodity is money. Our commodity is trading. Thousands more export offices should be founded. Many people have been discouraged to remain in this trade because the support which the little- or medium-sized exporter had in the past was infinitesimally small. Many people left this trade because they couldn't fight it out. I welcome all the help which is being proposed here.

I, as an individual whose skill and diligence refers only to selling—this is my forte—would be very happy if I knew that banks would become in any way or form partners in international companies—in export companies, forgive me.

Mr. **Chew**. I think that Mr. Ducat's point of view is shared by many, many members of our organization. However, the association has not taken this position. We think that banks should be much more active in exporting, trading and exporting, import-export. American banks are much less knowledgeable in export than the foreign banks.

Mr. Rees told a story about an exporter on the west coast who had struggled for 30 years to bring his company up to $10 million because he could only borrow 1½ times his capital from his bank. I know that exact exporter. He now works with a Brazilian bank and borrows six times his capital.

I also have gone to an international bank. So American banks have to be brought to financing exports through one mechanism or another. That is really the first step. Once they have learned something about financing exports, then perhaps they would have some place in the ownership of export trading companies.

The example was cited earlier of Lloyds Bank which owns Drake American. Lloyds Bank is a bank that lends traders many more times their capital than American banks.

Mr. Bingham. I might comment, in case you are not familiar with our procedures here, that any bill that we were to report out of this committee that affected the powers of banks to invest in foreign trading companies would have to be referred, I assume would be referred upon request, to the Banking Committee before it could be considered on the floor because we in this committee do not have jurisdiction over banks and the power of banks.

Mr. Chew. I think Senator Proxmire's comments about the bill when he tried to bottle it up last week, that it would be of benefit only to money center banks, was very true. Small or regional banks could not use this bill. It would be a tremendous advantage to the money center banks and no advantage to the local banks. But nevertheless, we don't oppose the bill because we think that some kind of export trading company legislation and some kind of incentive for banks to foster, to have an interest, to be encouraged to finance export trading, is necessary.

Mr. Bingham. Well, I would like to come back to Mr. Ducat, because he feels so strongly about this. It would seem to me, without knowing anything at all about your business, Mr. Ducat, that the very problem you cite about getting so little cooperation from the banks in your financing needs might be somewhat alleviated if the banks were allowed to have at least a partial interest in your companies.

Mr. Ducat. I made the wrong impression on you. I and my company have no complaint about the assistance which Brewster, Leeds & Co. got. It is common knowledge that the assistance an English or German or Dutch exporter gets from local banks is tremendously different and more positive.

Mr. Chew. And that is owned by an English bank.

Mr. Ducat. No, please. Now take for instance a simple example. A man gets an order for $1 million and a letter of credit is being sent from abroad. If you are an exporter in Hamburg, Germany, and you don't have more than $5,000, you can arrange financing in Hamburg against that letter of credit, the bank getting all the securities, that when they advance the money to the manufacturer guarantee the payment of the invoice. But they are well taken care of.

The same man in New York, $5,000 capital, he gets $1 million letter of credit from abroad, he goes to his own bank, the bank will begin to negotiate on the net worth of his company and ignore the fact that there is a $1 million letter of credit.

This is just an example.

Mr. Bingham. Is that because of banking policy or banking law?

Mr. Chew. I don't know.

Mr. Ducat. I do not know.

Mr. Bingham. Let's ask Mr. McCouch the question.

Mr. McCouch. Mr. Chairman, I would like to respond briefly to this question of U.S. bank responsiveness. American banks, both small and large, are actively involved in trade finance. My organization has an international portfolio consisting in large part of short-term trade finance transactions. We and many other U.S. banks are involved in financing the Japanese trading companies whose leverage figures are well known. To do so, we must deal in risk assessment, and here we get into questions of system, and organization which would lead a bank to feel relative comfort with a leverage of 30 to 1 in a Japanese situation and very uncomfortable with a leverage of considerably less in analogous American situation.

I think the value of the legislation that we are examining here is th it fosters the development of export enterprise with which Americ banks can deal on a basis of comfort, a situation which perhaps h never existed with a broad spectrum of U.S. export trading compani before.

Mr. BINGHAM. Let me ask you two gentlemen, since you repres associations in this field, have you had any conversations about th legislation, or would it be profitable for you to have conversatio about this legislation and exchange views as to what might be appr priate improvements in the bills that we have before us?

You represent the banking industry; Mr. Chew represents the expo industry. Why can't you get together?

STATEMENT OF GARY M. WELSH, PRATHER, SEEGER, DOOLITTI & FARMER

Mr. WELSH. Mr. Chairman, the Bankers' Association for Foreig Trade began discussing the bill in the association's subcommittee o export promotion, and that is where the endorsement of the bill w first developed. Then it went up to the full board.

If I could, I would like to reply briefly on two comments. I used t be an attorney with one of the bank regulatory agencies, and one of th problems facing banks has been a series of regulatory impedimen which have prevented banks from even taking nominal title to good in different situations. There was a situation that Congressman Re discussed in the case of Lloyds Bank. The Federal Reserve mad Lloyds Bank divest Drake America Corp. because it took nomina title to goods in the process of arranging for export sales oversea Bank regulators have thus been very much against banks even takin nominal title to goods in light of what they perceive to be very stri legal requirements concerning the separation of banking and com merce. So I think when the banks first approached this, they saw principally as a way of removing some of the regulatory and legisla tive impediments that have existed, and I think we have documente those in the appendix to the statement. And I think we have had much interest from the nonmoney center banks, in fact, more intere from the nonmoney center banks, once this legislation got started, tha we did from the money center banks.

And the second comment is that it was said that the provision o preferential loans would be unenforceable. That is simply not cor rect. While I am sure these gentlemen have a lot of problems to dea with in looking for incentives, banks have one problem that nobod else has, which is they are examined yearly by either the Federal Re serve System, Comptroller of the Currency, FDIC, or State bankin authority, and one of the items that is first examined, is any categorie of loans that are subject to special legal restrictions. That is, the firs thing they are going to look at are loans that are being made by bank to its export trading company, and they are specifically goin to be enforcing that in bank examinations.

Now, that doesn't become public. That is between the bank and it examiner, but that is a very close relationship in terms of when a examiner criticizes a bank, that is something that is usually corrected very quickly.

Mr. CHEW. Can I respond to that point because that provision lacks credibility to us. We realize the banks are regulated. The provision says that if a bank owns a trading company and gives it credit, it must give credit to other trading companies on the same basis, which may work to provide some export trading financing of the kind which is lacking in this country, because as one of you has mentioned, there are limitations which I don't understand on how the American banks can operate on export transactions as compared to foreign banks, which limit the amount of money they can use to finance export trade.

I know very little about the relation between a bank examiner and a bank, but I am quite comfortable with the statement that the bank can easily defend a loan to its own trading company subsidiary which it will have beefed up properly with a nice looking financial statement as compared to an export trading company that they do not have an interest in and which may have a modest balance sheet.

We would like to be like the Japanese trading companies with small capital, with the great leverage of the bank's ability to lend to us on a transactional, not balance sheet basis.

So the way that provision reads, I cannot evaluate it. I have read that Stevenson bill, and obviously it was written by lawyers and bankers trying to deal with a great myriad of history of legislation controlling banks which is impossible for a layman to understand. But that provision could bear reexamination. It requires some kind of automatic self-enforcing provision or else it is going to be meaningless. I'm sorry.

Mr. BINGHAM. Well, it is getting late, and I want to recognize Mr. Lagomarsino, but let me ask you one question. In the view of your association, is it crucial to this legislation that the banks be enabled to invest up to or to buy a majority, a controlling interest in a trading company?

Mr. MCCOUCH. Mr. Chairman, I think it has to do with the relative effectiveness of the legislation. Certainly there are some banks which would be satisfied with a small minority share. There are others whose policy is typically to take a larger share. These, I think it is fair to say, would exclude themselves if they couldn't pursue that line of organization.

I think it is fair to say also that you might find the negative effect most significant in the regional banks and smaller banking organizations whom it would be our hope in BAFT could be most involved in the trading companies.

Moreover, existing export finance organizations, some of which are presently controlled by banks and which could conceivably expand their export finance capability into the trading company sphere, would be hampered in doing so if the limitation on ownership were severe.

Mr. BINGHAM. Thank you. Mr. Lagomarsino.

Mr. LAGOMARSINO. Mr. Chairman, you asked the question I was going to ask, but let me follow up on that.

What would be your position on the bill if all references to bank ownership were eliminated?

In fact, as I understand it, several of the bills don't contain it at all.

Mr. MCCOUCH. If all references to bank ownership were eliminated it would be an interesting piece of legislation, but I think banks would view it as relatively limited in its effectiveness, and certainly, of cour very limited in its effectiveness with regard to direct bank interest.

Mr. Chew. On the other hand, the export trading fraternity in t United States might not be disrupted terribly. I would submit th certainly the question of majority ownership, you haven't asked m you asked the banks, maybe later, it is a pretty, pretty terrifyi thing to come in. Banks have not been in this field. Banks have n been on the commercial operations. To let them go in with a majori ownership is a very dramatic change from customary.

I look at this from my worm's-eye point of view. I have cred lines from several banks. I can imagine myself negotiating renew of those credit lines which are essential to the operation of my bus ness, with a banker that was trying to buy me, with a bank that w owning another trading company. Impossible.

Mr. Lagomarsino. What if, instead of ownership, it was 5 to 1 percent?

Mr. Chew. I think that is the good part of the bill. I realize th banks are very ambitious on this. If the banks did have that kind o ownership, not necessarily 5 or 10, maybe more, they would obviousl have to commit their resources and attention to the export tradin company, their personnel, and their lending capacity, and becaus they are lending money to their own trading companies, they woul develop the facilities that would become available to other tradin companies. American exports would develop.

So the purpose of the bill would be effected. Banks would becom more comfortable with export trading companies because they woul own some on a minority basis, and they would learn about expor financing, and American banks have a lot to learn. But control i unnecessary and destructive.

Mr. Lagomarsino. Mr. Ducat might not agree with you.

Mr. Ducat. I would like to add the following statement. We, i this country, have thousands and thousands of experts who kno how to sell American merchandise throughout the world. If we loo at Japan as an export country we find that about 10 trading companies are controlling this whole business and they are always interlinked with banks. If we are jealous of this and we want to be as successful as they the question is: Are we willing to pay the price to kill our export industry which we have here in order to change to the Japanese system where 10 or 12 colossal organizations will control 98 percent of the total exports?

I personally believe——

Mr. Lagomarsino. Do you think that would happen if banks were limited to, say, 5 or 10 percent?

Mr. Ducat. Mr. Lagomarsino, you are speaking of percentage of participation. I am speaking of the whole system. If I am a partner in a company and I am only permitted to buy 5 percent of the stocks, I still will do everything in my power to make this company successful, almost as much as if I would own 51 percent or 100 percent.

We, in our American system, have always helped the small man to grow and be successful, and many of our large industries today started on a very humble basis. The export business of America is loaded with talent, with bright people, diligent people. They are willing to work hard. If they didn't succeed more than they did up to now, it

pages tightly bound

is because neither the Government nor the banks have given them enough support. Give more support—let the banks show that they can help the exporters—and let's start 5 or 10 years from now what additional contributions are feasible from the banks when they have shown that they help the present group of American exporters.

You know, one more statement, forgive me, one more statement I have to make. When I heard this afternoon such peculiar stories, how wonderful the banks are equipped to help the American export business—they have an office in Brussels and in Hong Kong and you walk in and you have all the services—these are stories. We have all the offices and telephones and assistance all over the world in one form or another. What we have got is the knowledge, the ability to use American merchandise throughout the world. Our banks have the ability and the knowledge to make money with money. I resent that they become exporters.

Mr. LAGOMARSINO. To any degree.

Mr. DUCAT. To any degree for the next 5 to 10 years. Let them first help us, let American exports grow by their being more helpful. They have offices in Hong Kong. Let them help us to do more business in Hong Kong.

Mr. LAGOMARSINO. You mentioned two problems. One of them is Government, and I agree with you that the Government is probably your biggest problem, and the other one is banks. But unfortunately, although I suppose we might be able to do something about the Government, I am not sure we can, we can try, I don't think we can pass a bill that says the banks have to loan you money, but I don't think they would necessarily do it.

We can work on one, but I'm not sure about the other one.

Mr. CHEW. But some of the disincentives for lending on transactions which the banks are familiar with, I don't know why Lloyds Bank or Mitsui Bank can lend the million dollars on Joe's transaction and the American banks can't. They just cannot. They are limited.

Mr. LAGOMARSINO. Well, let me ask the bankers, are there Federal regulations or State regulations that prohibit that kind of lending?

Mr. CHEW. Transactional loans rather than balance sheet loans.

Mr. MCCOUCH. I will let Gary respond to the legal aspects of the question but, these aside, there are differences in risk assessment between American banking orgagnizations and foreign banking organizations. Foreign banking organizations bring with them to this country ingredients of their own cultural, commercial, and lending practices. So it is natural that risk assessments will differ.

As a digression, but related to what has been said before, I should say the comparison between the Japanese and the American trading company development should only be a very limited one. The Japanese system, from top to bottom, is so drastically different from the American system, from the Ministry of International Trade and Industry, the Ministry of Finance, the Bank of Japan, to the interlocking ownerships of the trading companies and the banks and the groups that dovetail with them, that to expect an American trading company system to develop along lines which would in any sense be parallel I think is very wide of the mark.

Returning to your question, one specific example of restriction on trade finance that could be mentioned is the ceiling on acceptance financing which most of the money center banks have run up against pretty severely in the last 6 months to 1 year. More financing could be done through this vehicle were it allowed, and I mention this not to suggest that it should be allowed. The regulators have their reasons for imposing the requirements. But there is a ceiling which is an impediment to that form of trade financing, including financing of U.S. exports.

Mr. Chew. And there is no bias toward export in the system. That is what we need.

Mr. Lagomarsino. Well, it is obvious to me with hardly any knowledge about complicated international banking, but having been in Japan, I think the big difference is that the entire government, the whole thing is directed at export. That's it. They aren't concerned, at least to nearly the same extent we are, in a lot of other things. That seems to be the major governmental function.

Mr. Ducat. Mr. Lagomarsino, what you observed in Japan exists in many other countries, without this vehemence as you have it in Japan.

Mr. Chairman, when I made certain negative remarks before, I would like to correct the impression. I was treated beautifully by my bank. I have been treated quite well by FCIA. Brewster, Leeds has pushed through many things which others who are less diligent or powerful didn't succeed in. But if I would have had more support, if my banks would have been more aggressive or liberal, if FCIA would have been as advanced as, for example, British or German credit risk insurance programs permitted, I would have grown multiple in comparison to what I grew in the last 35 years, and many small men who start out as one-man operations cannot grow or cannot grow fast because of the hurdles which exist, or the noncooperation which exists, in America are enormous.

Mr. Chew. These systemic disadvantages to export trading companies are very great. There are no advantages, there are no biases in the system in favor of export trading companies in this country. We are so little regarded that we were completely overlooked, even in the export trading company bill. We are a resource and can make a substantial contribution to American exports if we are fostered.

Mr. Lagomarsino. You know, I want to say obviously there must be something to export trading companies or we wouldn't have export trading companies, everybody would be handling their own products, and my view of the legislation is it would be a way, if we do it right, to assist the formation of more companies and to assist those that are already in the business.

Now, it is, like a lot of these things, unfair, probably, because you have gone through that, you have taken your chances and you have risked your money and all that, and it is true, if this is successful, it will make it easier for other people and they won't have to fight all the dragons that you have had to. So from that standpoint I will have to agree.

Mr. Chew. But we are submitting, Mr. Lagomarsino, that from our experience of Congress contemplating reinventing the wheel, contemplating bank-owned trading companies, contemplating that export trading companies are going to be a part of the export picture of the United States, from our experience we are recommending that they be given certain advantages which export trading companies have in other countries.

Mr. **Bingham**. We understand that.

Mr. **Chew**. I would submit that the Senate bill does not do this, Mr. Lagomarsino. It only provides, besides the Webb-Pomerene and the antitrust and small funding certain export support—the main thrust of the Senate bill is to set up bank-owned export trading companies or to allow them to buy into existing export trading companies. It does not benefit existing ETC's or even the new bank-owned ETC's. The bill needs much more work. What an export trading company bill should do in the United States is eliminate some of the disadvantages or give them some of the advantages which other export companies have in other nations.

Mr. **Lagomarsino**. Well, if I just might in closing for myself say that I think one of the very important things we can do is rewrite if not repeal and rewrite the Webb-Pomerene Act because it is very apparent, or at least it would be apparent to me if I were thinking of going into this business, with the recent action of the FTC regarding agricultural cooperatives which were supposed to be exempt from such kinds of activity, that you just can't be sure that if you have gotten into something like this that the FTC or the Justice Department is going to come after you, and even though you may well win, it is hundreds of thousands if not millions of dollars later and all that.

So I think if we are going to try to—if we are going to make this thing work, this preclearance situation is probably as important as anything else.

Mr. **Bingham**. Well, thank you very much, gentlemen, and you can be sure that your suggestions will be considered.

[Whereupon, at 5:40 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

[illegible] trading companies are [illegible] of the [illegible] United States. [illegible] trading companies [illegible]

Mr. [illegible]. [illegible]

Mr. [illegible]. I would suggest that the [illegible]

Mr. [illegible]. Well, if I [illegible]

[illegible]

EXPORT TRADING COMPANIES

WEDNESDAY, JUNE 4, 1980

House of Representatives,
Committee on Foreign Affairs,
Subcommittee on International
Economic Policy and Trade,
Washington, D.C.

The subcommittee met at 2:05 p.m. in room 2200, Rayburn House Office Building, Hon. Jonathan B. Bingham (chairman of the subcommittee) presiding.

Mr. Bingham. The Subcommittee on International Economic Policy and Trade will be in order.

The subcommittee today continues hearings on proposals to expand and encourage export trading companies and export trade associations.

Since the subcommittee's last hearing on this subject, several new bills have been introduced and referred to the subcommittee. These bills, H.R. 7310 by Mr. LaFalce, H.R. 7364 by Mr. AuCoin, H.R. 7436 by Mr. Reuss, and H.R. 7463 by Mr. Neal, will be added to the bills under consideration in conjunction with these hearings.

Next Tuesday, June 10, the subcommittee will hear the views of the executive branch on these bills.

Does the gentleman from Washington have a statement to make?

Mr. Bonker. I would just like to thank the chairman of the subcommittee for conducting these hearings on legislation which is indeed timely. We have before us several bills that are of general interest to this country in our efforts for world trade. They are of particular interest to the Northwest, for our ports stand to benefit greatly from the encouragement of export trading companies.

Puget Sound ports have a unique advantage in exporting. They are at all times 1 to 1½ days closer to the Pacific rim countries than any other place on the west coast. This is coupled with the fact that the United States is trading more and more with all Pacific basin countries.

By 1977, U.S. trade with these countries surpassed trade with Europe for the first time. All indications are that it is on the increase. One out of six Seattle jobs is dependent on foreign trade. This number will continue to grow, especially if we provide our exporters with the expertise needed to penetrate foreign markets.

The establishment of export trading companies can also benefit various segments of our industry. Again, in the Northwest, we are particularly interested in wood products. As everyone knows, these industries have been hard hit in recent months because of the ongoing recession.

The domestic market for finished wood products has vanished a housing starts have plummeted. In Washington State, currently, abou one-third of the 4,500 plywood workers are unemployed. If we ca allow these medium-sized businesses to participate in the world market and promote their commodities abroad, then that would give u good insurance against these housing fluctuations that make victim of people who are involved in this business.

We in the Congress must do what we can to promote exports of our finished products, at a time when the domestic market is low. That is why this legislation is of significant interest to the Northwest and why, Mr. Chairman, with your indulgence, we have invited some of the more prominent leaders from the Northwest to testify.

We will have Mr. Robert Anderson, who is the director of the Washington State Department of Commerce and Economic Development, and we will also have Mr. Ed Lange, who will represent the banking community, and Mr. Gordon Ebling, the vice president of Management Services International in Seattle.

So we will be a little provincial as it relates to the application of this legislation and its relationship to the Northwest.

I thank you, Mr. Chairman, for conducting the hearings and for allowing these witnesses to testify before this subcommittee.

Mr. Bingham. I thank the gentleman. He has certainly been a leader in this field. If this legislation comes to fruition, and I hope that it will, it will be a great deal of help.

We will hear now from our distinguished colleague from Oregon, Congressman Les AuCoin.

STATEMENT OF HON. LES AuCOIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. AuCoin. Thank you very much, Mr. Chairman, and I want to thank the other members of the subcommittee as well for giving me this time to offer my thoughts on the various proposals before you and in the Congress to encourage the formation of trading companies.

I also want, Mr. Chairman, to thank you for this opportunity that you have given me to reschedule my appearance originally arranged some 2 weeks ago when you opened the hearings.

Mr. Bingham. We quite understood your situation.

Mr. AuCoin. There was a matter called Mount St. Helens out in the Pacific Northwest that the gentleman from Washington knows a little something about that demanded our time on that occasion.

Mr. Chairman, you should be congratulated also for moving expeditiously to hold these hearings so that the House might have an early opportunity to vote on a reasonable proposal in this field before adjournment.

NEED FOR EXPORT TRADING COMPANIES

Last Thursday when I introduced my own bill to promote trading companies—and that bill is H.R. 7364—I recounted the plight of the United States in the international marketplace. This is a story with which I think we are all too familiar, one that is almost unchanging from year to year.

First we continue to run a trade deficit. Last year it was in excess of $25 billion. Our share of world markets has dropped over the last decade from over 21 percent to around 12 percent, while the total value of world exports climbed by almost $1 billion. Growth in American productivity continues to decline, expanding by only 1.7 percent in 1977 and by only 0.8 of 1 percent the following year.

When you look beneath these depressing numbers, you find a maze of government disincentives to potential exporters, among them the lack of financing, tax disincentives, antitrust laws, as well as market disincentives, keeping American business and industry out of the export field. Among those would be lack of knowledge about foreign markets and little or no expertise in overseas shipments of goods and services.

The answer to reversing these trends and correcting these problems is manyfold and includes a number of small but important actions that can be taken by the Congress. One of the most significant is the legislation before your subcommittee today, Mr. Chairman, to promote the formation of American export trading companies. It is a bold and impelling step to mobilize the productive and commercial resources of the country for one end: exportation of our goods and services.

If there is one piece of evidence that underscores the need for bold action, it is this: less than 10 percent of all manufacturing companies in the United States are invloved in export trade, slightly more than 30,000 firms. What about the other 280,000 companies? I think that is something that ought to attract our attention.

To reduce these numbers to practical realities, let me call your attention to a company in my district that manufactures rock crushers. It has a healthy U.S. market for its equipment but occasionally makes an export sale. It has made no significant effort to increase its presence in the international marketplace because of past problems with the marketing and shipping of its machinery, because it has encountered problems in financing overseas sales.

In one aborted transaction, the company was putting together a sale in Singapore for $1.6 million, hardly a significant amount to a large firm. But to a firm that usually transacts deals of between $100,000 and $200,000, the Singapore sale was of extreme importance. In the end, the deal fell apart for lack of financing at an attractive rate.

The point of this vignette, Mr. Chairman, is that the firm will continue to take the path of least resistance, confining itself to domestic sales, unless and until there is an easier way for it to market and finance its product abroad, where there do exist market opportunities.

A trading company of the type proposed by my bill and the others before you would be of immense help to this company in meeting the challenge of international competition. I am not going to sit before your subcommittee and cry "Wolf!" and say that without a trading company, the firm is going to go bankrupt. But it isn't going to grow in the way that is possible by entering foreign markets.

In that sense, the company will make fewer rock crushers, provide fewer jobs and make a little less money. And the United States will have fewer dollars in its export account. The company will survive but it won't be as vigorous and the country won't be as vigorous as they both can be with expanded exports.

Recognizing that trading companies can play a critical role in expanding our share of world markets, what, one might ask, impedes their formation and why is legislation necessary?

The answer rests in part with Federal laws and regulations and in part with the structure of enterprise and our traditional ways of doing business. Also uncertainties over our antitrust laws discourage cooperation among U.S. producers in the export field.

While the bills that have been introduced so far attempt to deal with these problems to various degrees, I want to stress today, if I may, the importance of adequate financing for exports. Even though financing has long been recognized as a frequent stumbling block for fledgling exporters, U.S. banks are prevented from offering most export trading services.

In turning to specific comments about the legislation before your subcommittee, Mr. Chairman, I want to underscore the critical need for any legislation to allow for bank participation in export trading companies. Without being able to tap the financial assets and services, wherewithal and knowledge of a bank or banking organization, any export trading company formed will be nothing more than a well-intentioned pat on the head to the export community.

The almost identical banking provisions of my bill and the one introduced by Congressman LaFalce will help to meet this fundamental need.

Also of vital importance to the success of any trading company legislation is antitrust exemption and reform of the Webb-Pomerene law. I do not pretend to be an expert in this subject area but am hopeful that this problem can be addressed within the context of the trading company legislation. I would be pleased to support any reasonable effort to do so.

Finally, Mr. Chairman, I want to note that the bill I introduced 2 weeks ago omits one provision that is contained in the bills sponsored by Mr. LaFalce and Mr. Bonker, my friend and colleague from the State of Washington, and in the Senate bill. It is the provision allowing State and local authorities to own and participate in export trading companies.

While publicly owned port authorities across the country are vital links in our national export effort, this provision is troubling to me and should be to anyone who believes in maintaining a separation between the States and commercial activity.

The competitive implications of this provision are far reaching and would, I believe, seriously undermine the structure of our economy and what remains of our traditional free enterprise system.

In closing, I want to again thank the subcommittee for its leadership in this area and pledge my full efforts in the Banking Committee, where I serve, on behalf of this legislation to bring a bill to the floor. I look forward to working with you.

I thank you for the opportunity of appearing before you.

Mr. BINGHAM. Thank you very much, Les.

BANK PARTICIPATION

I would like to pursue the question of bank participation. As you know, any bill containing that provision has to be referred——

Mr. **AuCoin**. To the Banking Committee.

Mr. **Bingham**. To the Banking Committee as well.

Mr. **AuCoin**. Where the gentleman from Oregon serves.

Mr. **Bingham**. Yes, I am well aware of that. That is why I wanted to ask you about that.

First I might ask a practical question, whether you think that there is a reasonable chance that legislation along these lines would be reported favorably by the Banking Committee.

Mr. **AuCoin**. It is my considered opinion, Mr. Chairman, that there is, yes, a reasonable chance.

Mr. **Bingham**. If banks are allowed to participate in the formation of trading companies, is there danger that one or two giants might dominate the field?

Mr. **AuCoin**. Mr. Chairman, I have worked on the drafting and the consideration of the bill I introduced for nearly a year, and this is one of the concerns that I had as well. I don't believe that that is a gigantic risk. I think the greater risk is forming trading companies without the integral services, knowledge, expertise and network that banks and bank branches can provide in a working partnership within these companies.

I think to deny these trading companies that asset is a much larger risk and one that could make the trading companies that are created by any legislation we pass not nearly as effective as they would be otherwise.

Mr. **Bingham**. Do you favor a limit on the proportion of equity that a bank can acquire?

Mr. **AuCoin**. Yes. I think the chairman knows in that regard the Senate Banking Committee made several changes in the provision of the legislation. It is moving now within that body. Among those changes is one along the lines that the chairman just mentioned.

I understand there is a provision that would bar any banking organization from taking a controlling interest over $10 million in a trading company without prior approval of the appropriate banking agency. That strikes me as being a sound limitation.

Mr. **Bingham**. I notice that your bill prohibits a bank from making any loans to export trading companies in which the bank does hold an interest, and to customers of such a company, on terms more favorable than those afforded other borrowers.

Mr. **AuCoin**. Yes, Mr. Chairman. I think the equity of that speaks for itself.

Mr. **Bingham**. Do you think that is administratively feasible?

Mr. **AuCoin**. In my judgment it is. And from those with whom I have worked in the Banking Committee and outside the Congress, it is my belief that yes, it would work, that it is administratively possible.

Mr. **Bingham**. Let me ask a final question, then. If that provision is in there, why would banks be interested in investing? Why would they want to get involved if they could not favor their own trading company?

Mr. **AuCoin**. It seems to me, Mr. Chairman, that what we are trying to do on the one hand is create an opportunity to form an organization that is going to be effective in the field of international trade, and that is a trading company. I think in order to do that, you have to bring in the ideas, the knowledge, the experience, the expertise, the network that is represented by the banking community. That is what I think is essential to give power and force and effectiveness to the companies themselves.

I think that can be done without excluding banks from loaning funds to other trading companies. I think that making a requirement of that kind is one that banks know how to live with, can live with and can be policed. But you still, then, within the trading companies that are created, have structures with the financing component that are important and necessary to make them truly effective.

Mr. BINGHAM. Thank you.

Mr. Lagomarsino?

Mr. LAGOMARSINO. Thank you, Mr. Chairman.

Thank you for your statement. I think you make a lot of points that clearly need to be made about our export policy, lack thereof, and confusion about, whichever, pick one. I agree with two out of the three points you made, and can be convinced, I think, on the third one. The one I have the least questions about is the one the chairman has been questioning you about; namely, bank participation.

Why is there opposition, in your opinion, to allowing banks to become participants in export trading companies?

Mr. AUCOIN. I think opponents of this idea probably should speak for themselves. I hate to carry their baggage for them. But in talking to people who have some resistance to the idea, it generally boils down to a point of view that banking and commerce ought to be kept separate. In my view, that is not an unreasonable principle.

But if we are going to look at what we are trying to achieve in the field of international trade, laying down appropriate safeguards against any abuses that might be made—and I think clearly the Senate bill lays down a number of them, and my own bill has three of the five limitations that the Senate bill contains—then I think it is possible to take the best that the banking industry has to offer, add that as a component part of trading companies, and have what trading companies are meant to be, a team of various kinds of entities that have something to offer, who can pool their resources and equip the total entity with the competitive ability to penetrate foreign markets in a way that they are not being penetrated by the United States today.

I grant you that there need to be safeguards, rules laid down. They need to be clear, they need to be enforced. But once that is done, I think to deny the crucial financing is going to add a crippling effect to the trading companies that need not be added just for the sake of the conventional way of looking at banking and commerce as we have looked at it in the past.

Mr. LAGOMARSINO. Just one thing we would have to weigh if we decided to go the bank participation route is how restrictive can we be without endangering the entire plan. In other words, if we impose too many restrictions, banks may opt, as the company you use in your example, just not to get involved, or at least not to get involved in that way.

So we have to carefully work this out if we decide to go that way. What is your opinion on permitting the Export-Import Bank to have authority to provide loans to cover startup costs and operating expenses for export promotion purposes?

Mr. AuCoin. In the concept, that strikes me in a very favorable way.

Mr. Lagomarsino. Thank you.

Mr. Bingham. Mr. Bonker.

Mr. Bonker. We have already touched upon what was one of the key features in this issue, and that was the banks. I am in agreement with your suggestion that banks ought to be involved if these trading companies are going to be viable.

Mr. AuCoin. I appreciate that.

Mr. Bonker. With some limitations, however, so that we don't invite abuse.

Mr. AuCoin. Indeed.

Mr. Bonker. As we move toward becoming more active in the export market, I imagine this subcommittee will be adding some banking provisions. I know when the bill reaches your committee, you will have the ultimate say on what these features should be and we will have to work them out.

PORT DISTRICT PARTICIPATION

With respect to your comment about involvement of port districts and other local entities in the formation of local trading companies, we may have a difference of opinion.

Mr. AuCoin. We may have, Don. But I am not signing a declaration of war over the principle. I just wanted to voice my own concern going into the early stages of the consideration of the legislation.

Mr. Bonker. I understand. I think this is fundamental, at least in this one respect. We can see the economic miracle of the Pacific rim countries: Hong Kong, Taiwan, South Korea, and Japan. They have really surpassed most of the Western World on the export market.

One of the reasons is because the governments in these countries have been promoting and supporting the business community in the world market. In our country we have had more of a reputation for inhibiting trade by imposing certain restrictions on the business community.

You have addressed a key issue, and that is, what role, if any, should governments have in this respect? In my particular area, and I imagine this exists in New York and other parts of the country, the port authorities are really in the forefront of the trade business.

I really think we ought to provide rather generous provisions for banking and port districts, for port activities, to become involved in these trading companies so that we can get things moving. I think we are losing ground so rapidly on the world market that if we continue to inhibit and discourage trade, we are going to lose out altogether.

I would much rather err on the other side and see as many people as possible involved in promoting trade. If there are abuses later on, then possibly we can move to impose restrictions.

Mr. AuCoin. I understand my friend's view. As I say, my comments are not meant to be a declaration of war on the idea. It is just that I do have that reservation, and I felt it appropriate to raise it before the subcommittee. I appreciate the gentleman's comments on the crucial need for the inclusion of banking in this whole concept.

If we don't build these companies with all the proper players in support of the team, then that team is going to be crippled, it is going to be weakened. There is no way we are going to meet the foreign competition, which I know the gentleman from Washington sees a I know the members of this subcommittee see.

There is no way we will be able to do it. I think that is the way w ought to look at the final version of the trading company legislati that we write in this Congress.

Mr. BONKER. I want to thank the gentleman, both for his appearance and his leadership. Since we have been in Congress he has be in the forefront of encouraging trade. I think that is a real compliment to you and to the people that you serve.

Mr. AUCOIN. Thank you.

Mr. BINGHAM. Thank you very much. We appreciate your leadership and your testimony here today.

I understand that Mr. Robert Anderson has to make a flight connection. I will, therefore, call him next. The gentleman from Washington is recognized to introduce the witness.

Mr. BONKER. Thank you, Mr. Chairman.

I take this opportunity to welcome Mr. Robert Anderson, who i one of Washington's prominent citizens and now serves as the director of the State commerce and economic development department. W have had a chance to talk about this legislation and the state of the economy as well.

I think Washington State, in view of the Mount St. Helens eruption, must commit itself to rebuilding its economy because of the devastation that has taken place.

Mr. Anderson serves the Governor of the State very well, and it is a privilege to have him before us.

STATEMENT OF ROBERT C. ANDERSON, DIRECTOR, DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT, STATE OF WASHINGTON

Mr. ANDERSON. Thank you, Congressman Bonker and members of the subcommittee.

As Congressman Bonker has indicated, I am director of the Washington State Department of Commerce and Economic Development in Olympia. Our agency was authorized by the legislature in 1957, so it has been in place for some years; 10 years later, the legislature established an office of foreign trade within our department of commerce. The purpose of the agency as stated is "to continue, and to accelerate the orderly growth of the economy of the State; not only to preserve, but also to increase the economic well-being of its citizens and its commerce."

Before I proceed further, may I be permitted a plug with regard to Mount St. Helens. With regard to Congressman Bonker's comments, I would say, if I might, that in spite of the mountain's eruption, the State of Washington is very much alive, contrary to national reports, and proceeding on course economically, socially, culturally and politically. The devastation created by the volcanic activity is incredible. Conservative estimates of recovery costs may exceed several billions of dollars. Without question, it will take a concerted effort of government at all levels, Federal, State, and local, working in concert with the private sector, to assist the State's communities that are suffering from ash fallout.

The full economic impact of the explosion may not be known for many months; the atmospheric, ecological and geological impact may also not be fully known for many years. You may be assured, however, that the pioneer spirit that originally explored and developed the West has once again reasserted itself. We are all proud of the many examples of individual selflessness and community cooperation that occurred spontaneously. Once again, it has been impressed upon each of us that the assertive forces of nature are stronger than those of man but that man can adapt to these forces and return to live again. We hope that the worst is behind us and that the mountain "gods" are now appeased for another 123 years.

MEETING FOREIGN COMPETITION

Now to the subject at hand. I am pleased to have this opportunity to testify on H.R. 7230, the Export Promotion and Export Trading Company Act of 1980. For many years we have watched with envy the remarkable success of the many well-known Japanese trading companies, over 30 of whom have offices in Seattle, Wash., primarily engaged in natural resource exports but also constantly seeking new manufactured products to export to Japan.

These fully integrated companies have manufacturing, financial, distribution, wholesaling, retailing, and export subsidiaries. They work within national goals and guidelines delineated by their federal government. They informally develop specific noncompetitive market shares, particularly in Third World Countries. Because of their success, in fact, they have been emulated by the Republic of China, with only marginal success because of the competitiveness and free-market atmosphere in Taiwan, but with more success by the Republic of South Korea, partly because of their strong need at the national level for maximum export sales and foreign currency return.

Our dilemma has been how to compete for world markets in the face of this kind of integrated industry government combination. Our own system with its pervasive and often restrictive government regulations (Foreign Corrupt Practices Act, IRS regulations, et cetera) has few if any Federal monetary incentives of support and is more often than not very competitive. The national need for more exports to help reduce our balance-of-payments deficit and provide more jobs has increasingly been recognized by both the executive and legislative branches of Government. H.R. 7230 addresses this problem, as does S. 2379 on the Senate side.

It is my understanding that H.R. 7230 will be amended and that further hearings by other House committees will be held on this very important and complex issue.

FRAMEWORK FOR TRADING COMPANIES

It is complex because of the very nature of our historic, ingrained free enterprise system. For years, antitrust laws have limited cooperation between firms. Proprietary information by banks, ports, and private firms have restricted potential cooperative opportunities. With these thoughts in mind, I suggest the following.

First, provision is made in section 105(B)(1) of the Senate bill for bank participation in trading companies. Any amendment to H.R.

7230 must recognize the competitive nature of banks and the wid variation in capabilities of banks from region to region.

Two, section 5 of H.R. 7230 declares that the act does not preemp State or local authorities from "organizing, owning, or otherwise participating in or supporting export trading companies." Although am philosophically oppcsed to public competition with the privat sector, there may be instances where public bodies could be instrumental, working through trading companies, in substantially increasing exports. Care must be taken, however, to assure that smalle public authorities do not lose a competitive advantage because the do not have the monetary or other legislated requirements for participating in trading companies.

Three, for some years, in hearings before numerous congressiona committees, representatives of industry and trade organizations hav been extremely vocal in support of the need for Federal tax incentive for exports. I would repeat that plea once again.

The Domestic International Sales Corporation (DISC) is a smal step in the right direction, but annually we must fight a battle i Congress to retain even this small asset. Recent heavy U.S. incom tax burdens on American employees working overseas for America companies have been a detriment to the medium-to-large company often multinational in scope and representing our major export potential. Citing just these two examples, H.R. 7230 offers an opportunit to remedy some of these shortcomings.

Four, export management companies, already familiar with domesti products, overseas markets, and the documentation and financin necessary to move goods abroad, perhaps offer initial opportunity t strengthen the trading company concept. Congressional staff shoul explore thoroughly the mechanics by which export management company activity might be horizontally integrated into a close approximation of a trading company.

Fifth, Washington State's exports, and this is the Seattle custom district, which includes some Columbia River ports as well, have increased from $664 million in 1960 to $1.9 billion in 1970, to an established $8 billion in 1980. Aircraft, forest products, and agricultura products are the three major components. There is developing a rapi increase in nonelectric machinery, electronics and diversified small to medium-sized manufacturing. It is this latter grouping, plus agriculture, that has the biggest potential for increased exports from Washington State by trading companies because there is more competition in these industries and their distribution is less structured

It is interesting to note that, whereas we are now seeking to develop the legal means to form trading companies, there is an increasing tren in Japan for the small- to medium-sized companies to now bypass th trading company, reduce the number of middlemen in a cumbersom and very expensive internal distribution system, and deal with thei customers directly. The substantial political, social, and cultural differences between the Orient and the Occident seem to mitigate agains copying too closely either the Japanese trading company concept o the "Japan, Incorporated" philosophy.

Congress is to be commended for its search for new avenues of increasing exports. As H.R. 7230 is amended, as other committee hearing are held on ways and means to better assist our own American indus try, agriculture and consulting services to take advantage of their export potential, I would like to reserve the right to provide additional comment as ideas are further developed for incorporation into Federal legislation.

Thank you for allowing me to share with you.

Mr. BINGHAM. Thank you, Mr. Anderson. I am sure any comments of that sort will be most welcome.

INCENTIVES FOR TRADING COMPANY FORMATION

I would like to ask you this question. Export trading associations can now be established under existing law. Do you have any that are active in the State of Washington?

Mr. ANDERSON. No, we don't at this time, Mr. Chairman.

Mr. BINGHAM. What, in your opinion, is the primary reason for that? What are the keys to providing a framework for export trading companies that would make them attractive?

Mr. ANDERSON. I think in the past, Mr. Chairman, there has not been a package, if you will, such as is represented by these proposals, that makes it attractive and makes it worthwhile for smaller companies, from the assistance of a public entity such as ours to enable folks to get into this kind of business. It has been difficult and, indeed, there have been certain other disincentives, as Congressman AuCoin commented before, that made it difficult.

Some companies found that it was not worthwhile to go to the effort of establishing these companies. Second, we are at the front end of the sophistication curve in recognizing the need for additional export concerns. I don't think to this point in time there has been that much concern about developing these markets.

As we begin to accelerate, we begin to see the deficiencies in the current legislation; therefore, this new legislation, I think, will allow a real acceleration of this program.

Mr. BINGHAM. We heard a witness the other day who is and has been for a long time president of a very active trading company. They look for small businesses who don't have the contacts, don't have the know-how, and who need an assist in going into the export market.

They have been doing that successfully for a great many years. What I am not quite clear on is what are the provisions of existing law which inhibit that kind of activity? Is it the fact that banks can't participate? Is it the fact that the Webb-Pomerene provisions are not useful? Is it the fact that the State and local governments cannot participate?

I am, frankly, a little puzzled as to just what is the key for making this technique work for expanding exports.

Mr. ANDERSON. Mr. Chairman, I think your comments rather illustrate the concern and illustrate the point that we are seeking here. There has not been legislation which has addressed many of these concerns.

Perhaps some of them are less serious than the companies would perceive them to be, but there has not been a complete package which eliminated some of the disincentives which provided other opportunities for small companies to become involved in this process, and perhaps an opportunity for the public sector to aid where it could appropriately.

I think it all has to come together. We feel that this legislation as it has been advanced to this point is a step in that direction. So for that reason, we are supporting it.

Mr. Bingham. Thank you.

Mr. Lagomarsino. Thank you, Mr. Chairman.

Mr. Anderson, would you say that the cause of our trade problem is a lack of domestic industry competitiveness or factors relating to export disincentives or lack of support by our Government, or all three of the above, or none of the above?

Mr. Anderson. The third of the above perhaps relates to the other two. I think it is a couple of things. There are disincentives, and also there is a great deal of ignorance on the part of many companies, particularly the smaller ones, as to how to get in the process.

An agency such as ours, and many of the banking institutions who have overseas offices, can be very helpful in assisting these companies; but oftentimes they see some of the barriers that are still before them and feel that it is not worth the effort.

So we feel that increasingly as our own domestic markets continue to shrink or change, that this need is here. If we can come up with strong legislation that will support these emerging companies and this new attitude that they have, I think we will certainly have much greater penetration in these foreign markets.

INDUSTRY-GOVERNMENT COOPERATION

Mr. Lagomarsino. One of the things I hear all the time, not just in relation to export but in relation to business generally, investment and finance, is that the people who are engaged in it or want to be engaged in it or would be engaged in it are concerned about what direction legislation might take here in the Congress.

I don't know how to get around that. We can pass legislation, but I don't know how we could guarantee that some future Congress won't go down the same path that prior Congresses have, and actually not only not help exports but pass some legislation that is positively detrimental.

Mr. Anderson. I guess those of us on the west coast still believe in a manifest destiny. We are very optimistic and we think if a strong signal occurs to the folks who want to get into this business and want to aid in this process and thereby enrich themselves, that they will strike out and move into these various foreign enterprises in a much greater effort than we have had in the past.

Mr. Lagomarsino. I think you are right. I think this legislation, no matter what form we finally fashion it into, can be very helpful, not only in what it actually does but the perception that people will have about what our attitude is and is likely to be in the future.

Mr. Anderson. I think that is very important, sir.

Mr. Lagomarsino. When I was in Japan with Mr. Bonker several months ago, I got the very distinct impression that that government exists primarily for export. I might be wrong, but I am sure they spend an awful lot of time like that, all the way up and down the line.

Mr. ANDERSON. I believe if they didn't, Japan wouldn't exist. What troubles me, having visited the People's Republic of China, is that I see too many Japanese appliances and different kinds of industrial gear already in the People's Republic, and it seems to me that again, we are falling behind in terms of our initiatives.

Mr. LAGOMARSINO. Thank you.

Mr. BINGHAM. Mr. Bonker.

Mr. BONKER. Perhaps we can learn something from them, and the trading company is one example. There are many factors contributing to America's decline on the world market, not all of which are our fault. It is just that these countries are far more aggressive than they used to be. They have adopted very sophisticated marketing techniques. The Japanese know more about our consumer demands, sometimes, than we do.

But we can learn, and I think that we are just entering a new era which is fiercely competitive in the international market. Either our Government will have to do more to encourage trade or we will just sit idly by and let other countries surpass us.

That is what this bill is all about. But I don't think it is the end-all. I think we need a comprehensive strategy. I think our universities should do much more to educate students in the international market, for example, more sophisticated language training. The Japanese come over here, they understand the culture, the language, and so forth. Right at the outset we are at a competitive disadvantage.

ADVISORY ROLE OF TRADING COMPANIES

To narrow the focus for a moment, Bob, there are a lot of lumber mills in our area who are anxious to export. There is a tremendous demand in Japan because they don't have much in the way of indigenous lumber resources, so they have to import a lot. Trying to plug in a mill somewhere in the upper peninsula of Washington State into the Japanese market is a very difficult thing to do.

They may not have any tariff barriers, but they have a lot of nontariff barriers and a lot of restrictions and a lot of obstacles. Pretty soon the small businessman just says it is not worth it.

I am wondering if a trading company could really provide a great service beyond the financing and the marketing services, but just to help overcome some of those obstacles and maybe to keep some of these companies a little more honest in our free trade relationships.

Mr. ANDERSON. I would suspect, Congressman, that if they are worth their salt, they are doing their job. Indeed, they could because they would become much more aware of the intricacies of these nontariff kinds of barriers. I think they are able to provide a lot of advice to small businesses, particularly in your case in the lumber mills, as to how to find segments of the market that otherwise would go unnoticed and to begin to develop.

It can be a propaganda kind of thing. Our trading companies could develop a different kind of rapport with Japanese markets than is the case right now where the approach is so fragmented.

BANK PARTICIPATION

Mr. BONKER. And you feel that banks ought to be involved in this legislation?

Mr. Anderson. I believe that would be appropriate. I certainly feel that is a part that would enhance the stability of the trading companies.

Mr. Bonker. With some limitations?

Mr. Anderson. Obviously, there have to be limitations. But again, there are my comments about different sizes of banks. I think there ought to be an opportunity for all financial institutions to participate according to their capabilities in these programs.

DISC

Mr. Bonker. Finally, you mentioned DISC, the Domestic International Sales Corporation, which has made it possible for some companies to participate in the world market. You mentioned that Congress has had a difficult time expanding DISC.

Would you agree that perhaps we ought to increase the DISC benefits as part of the package for promoting export trading companies?

Mr. Anderson. I think that would integrate well in this whole concept before us right now. Yes, I would agree.

PORT DISTRICTS

Mr. Bonker. One final question. I get the impression that maybe you wouldn't want to see ports involved in this, or maybe you would want to exempt ports from the provisions of the bill. Do you want to elaborate on that?

Mr. Anderson. Being very parochial, I don't think that the need is there for ports to participate in the State of Washington. I think their trade development programs stand by themselves quite well right now. They have done a good job of developing export markets and working with their customers.

Many of them, of course, besides having shipping products, are transiting ports, as well, for goods passing through the United States going to other parts of the United States. There may be, however, public entities across the United States that have a different concern, so therefore, I think we ought not to be that parochial in expressing our own concern.

Again, very candidly, we haven't walked through there so carefully as to really determine what disadvantages there would be in having ports participate even in our State. So my objection is candidly quite mild because we simply haven't thought of all the ramifications. But I do recognize that in other parts of the country it might be appropriate to invite public participation.

Mr. Bonker. Thank you.

Mr. Anderson. Thank you very much. It is a pleasure to work with you, Congressman.

Thank you, Mr. Chairman.

Mr. Bingham. Thank you, Mr. Anderson. We appreciate your being with us.

Our next witness is Mr. Valenti. It is a great pleasure for me to welcome before the subcommittee an old friend and a very distinguished gentleman, indeed. He is the president of the Motion Picture Association of America, and also of the Motion Picture Export Association.

I remember very well his service as a professional assistant to President Johnson.

Welcome back. It is a pleasure to see you.

STATEMENT OF JACK VALENTI, PRESIDENT, MOTION PICTURE EXPORT ASSOCIATION OF AMERICA

Mr. VALENTI. Thank you, Mr. Chairman, for the praise. I am very grateful for this chance to talk to you about these proposals which are now before the Congress, H.R. 5061, S. 2718, H.R. 7436. Of course, as well you know, the stated objective of all of these measures is to promote and expand the export trade of the United States.

As the president of the Motion Picture Export Association, I can give you vivid testimony as to the benefits which flow from the formation of an export trade association. The members of my association are the 10 largest motion picture and television programers in the world, and they have persistently increased the value of their exports during the 35 years of its existence.

In 1979, my association brought back more than $700 million in surplus balance of trade. That may not sound like a lot, but the Nation's running at the annual rate in 1980 of $30 billion in trade deficit. Our contribution is a significant amount, I think, in strengthening the American dollar.

We, the motion picture industry in the United States and the television programers, operate in an often hostile environment of extensive government cartels and quotas and intervention which, I can readily testify, are both imaginative and painful.

ANTITRUST EXEMPTION

I think that we owe much of our success abroad to Webb-Pomerene. I am, therefore, very outspoken in favor of efforts that you gentlemen are in the forefront of promoting now to extend the benefits of that legislation to other American exporters, including our service industries.

I have said that our Nation is bleeding from trade deficits right now, and I think that we need to do everything we can to improve our export trade. Now, why is Webb-Pomerene, which I want to speak to, of such importance to the future of export sales? I will speak about that from my own intimate knowledge of it.

I think without Webb-Pomerene, the U.S. film and television industry today would be in serious trouble. We have to deal every day, in more than 100 countries around the world, with government monopolies, profit cartels, government-inspired cartels, non-tariff-trade barriers, a multitude of restrictions that have been created and erected by either legislative fiat or government decree whose aim it is to choke off the American film trade in those countries.

Absent the strength given our companies by Webb-Pomerene, I tell you, without any peradventure of doubt or any hesitation, that the export licensing of American films and television abroad would be seriously harmed. So commonsense, I think, ought to tell us that at a time when we are hemorrhaging from these trade deficits, that this Congress, the leadership that you provide, ought to be doing all it can to reinvigorate these export sales.

Webb-Pomerene is a very singular asset. We ought to preserve it, we ought to enlarge it, and we ought to make certain that every industry who needs it is encouraged—and I underscore that word "encouraged"—to use it. My basic position is clear. I am in favor of any legislation which promotes the export trade of the United States.

I believe we need such legislation now. I ask you to keep that in mind when I tell you this afternoon that I also see some serious problems in H.R. 5061 and the other legislative proposals as they presently stand. If I sound kind of a sour note today, it is because I think we lose sight of the objectives because I think some of these proposals get a bit cumbersome. To make Webb-Pomerene work, it has to be substantial and simple.

Indeed, the report of the business advisory panel on antitrust export issues to the National Commission for Review of Antitrust Laws and Procedures recommended: one, the Webb-Pomerene Act should be retained at the present time; and two, the Webb-Pomerene Act should cover the export of services, as other witnesses have suggested, and they are not legal experts and I am not a legal expert.

So I do not intend to comment in detail on the draft legislation. Our counsel are preparing a more technical analysis which we will submit shortly.[1] All I will do today is comment generally on some of the broad problems I see in H.R. 5061, H.R. 7436, and S. 2718.

In particular, I want to focus on the aspects of the proposed legislation which trouble me from a practical, realistic viewpoint, as a businessman with experience in the export area.

As I see it, the need is to improve on the Webb-Pomerene law and to provide the kind of certainty and support which will permit existing export associations like ours to continue to operate successfully and encourage the formation of new associations in other industries, where this will be useful.

I, therefore, am pleased to see, for example, that all of the present proposals would extend these benefits to the service area, and also that an effort has been made to provide a clear exemption.

NEED TO GRANDFATHER EXISTING ASSOCIATIONS

Unfortunately, these pending bills fall short of the mark in other respects. For example, instead of merely making the benefits available to the service industries, these proposals would either repeal the Webb-Pomerene law or modify it so substantially as to raise questions about the continuing validity of the precedents and principles which have been developed over the years that give marketing people in Europe and Asia a track to run on.

This could create a good deal of uncertainty. I think that the situation is aggravated by the fact that no one can be sure of eligibility under the proposed act until new guidelines are published and promulgated setting forth what "export trade," "export trade activities" and "methods of operations" will be permissible. It is hard to comment on those terms when they become artful phrases, or language which really has no meaning until they have been buttressed and the vacant spaces have been filled.

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[1] See appendix 1, p. 277.

More importantly, none of the present proposals contains a clearly stated grandfather clause. The business community strongly urges that existing Webb-Pomerene associations, which are operating in accordance with the current law, should be certified and certified promptly.

I am surprised to find that none of the proposals provides any specific protection during the hiatus period for existing associations during the period between enactment of the new law and the date on which the required certification is issued. Surely no one wants trade associations to close down during this interval, which could be lengthy because of the complicated certification procedure.

I think unless the legislative language clearly and unambiguously makes it evident that the immunity of existing associations shall continue for their existing activities, I believe that the intent for which we are laboring, the intent of the Congress and the National Commission will be thwarted.

CERTIFICATION PROCEDURE

I tell you quite frankly I think the antitrust authorities have insisted on so much protection, that the whole edifice, the whole endeavor, the whole purpose becomes cloudy, and businessmen are going to be discouraged from applying. I think the Congressman from California was alluding to that a moment ago.

I want to make two comments in that connection. First, the certification procedure provided in H.R. 5061, the Bingham bill, seems much more preferable to the more cumbersome requirement of S. 2718 and H.R. 7436. The Bingham bill (H.R. 5061) enables the Secretary of Commerce to certify export associations, after consultation with the Justice Department and the FTC, on the basis of application showing the methods by which the association proposes to conduct its export trade.

By contrast, S. 2718 and H.R. 7436 require the applicant to show a particularized need and permits the antitrust enforcement agencies, which quite naturally take a negative view of any exemption, to hold up or block the certification process if they disagree. I have no specific quarrel with that. It may be genetic. [General laughter.]

But nevertheless, it is not what this bill intends to do. It seems to me that the members of the industry making the application are far better placed to determine the need to form an export association. They should not be second guessed, so long as it is evident—I underscore that, Mr. Chairman—that the activities of the proposed association will not violate traditional principles of U.S. antitrust law by having a substantial impact on domestic prices or competition.

Let's not forget that these legislative proposals are the result of a general need, apparent to all of us, to increase our country's export trade.

Second, export associations like ours need flexibility in order to react immediately and efficiently to overseas developments, government actions of various kinds, swift retaliatory actions taken by governments under the guise of protecting their local industries. I fear this flexibility will be lost if export associations in certification proceedings are required to provide detailed descriptions of their proposed activities and then prevented from doing anything which is not specified as permissible in the certificate itself.

In other words, you have a whole lot of "do's," and anything that doesn't come under the "do's" becomes a "don't" until approval is obtained. You know that politics is very unpredictable. Life is very unpredictable. And export trade is very much unpredictable when you are dealing with the amorphous elements of government and cartels that aim to choke off and strangle American exports. Flexibility of movement, I can testify to you, is absolutely essential.

Now, what is needed, in my judgment, is a simple, clear statement of antitrust immunity and the procedure to obtain that protection. Otherwise, the result of the new legislation will be to deter formation of new export associations and may, in fact, place unnecessary limitations on those which already exist.

If Congress wants to encourage the formation, operation, and success of export trading companies, these provisions, in my judgment, ought not to be merged in with the expansion of Webb-Pomerene. I think they ought to be separated out, Mr. Bonker. I urge that the Congress recognize that different factors, as you are eliciting now in your questioning, govern export trading companies, on the one hand, and Webb-Pomerene associations, on the other.

If I may be so bold, there may be two bills, one dealing with the export trading companies and the other dealing with a simple declaration of faith and support for Webb-Pomerene. The expansion of Webb-Pomerene, I think, to coin an old cliche, is an idea whose time has come; but we must keep the overall objective in mind.

This new legislation should increase—I underscore "increase"—opportunities for American businessmen to utilize export associations where they see a need to do so. I don't believe this subcommittee chooses or wants to place new restrictions on their activities.

BUSINESS ADVISORY PANEL RECOMMENDATIONS

Eighteen months ago, when an extensive review of export trade associations was undertaken by a Presidential commission appointed for the purpose and studied in detail by an advisory panel of business leaders, I presented my views on the need for export trade associations. I not only elaborated on our experiences and the benefits our members derived from the existing Webb-Pomerene Act, but also pointed out that these benefits should be available generally to more exporters. I attach a copy of that paper with, I hope, readable prose, for your examination.[1]

The Business Advisory Panel members, not all of whom were proponents of the existing legislation, felt that there was enough merit in my position to recommend expansion of existing legislation.

Let me conclude by saying that if you were to ask me what should this bill have, I would say, one, keep it simple; two, make it easy for industries to apply; three, encourage, don't discourage, businessmen; four, let the Justice Department make sure that the areas of antitrust, in which they are the guardians, are not violated, and let that be the only role of the Justice Department, and five, allow American companies to live and survive in the foreign marketplace, which is, as Tarzan said to Jane, a jungle out there.

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[1] The paper prepared by Mr. Valenti for the Business Advisory Panel on Antitrust Export Issues is retained in committee files.

That is exactly what it is. Those of us who have spent a good deal of our daily lives in trying to expand trade abroad know that area very well.

Mr. Chairman, I thank you very much for allowing me to express some of my views.

Mr. BINGHAM. Thank you very much, Mr. Valenti.

Before we ask you any questions, we might call on Mr. Rohrer, who represents the Phosphate Chemicals Export Association. Mr. Rohrer is senior vice president for operations of that Webb-Pomerene organization.

STATEMENT OF WILLIAM M. ROHRER, SENIOR VICE PRESIDENT, OPERATIONS, PHOSPHATE CHEMICALS EXPORT ASSOCIATION, INC.

Mr. ROHRER. Mr. Chairman, I am William Rohrer, senior vice president of operations for the Phosphate Chemicals Export Association of New York, here to express our concern on the Webb-Pomerene aspects of the bills before this subcommittee.

I would like to introduce, here with me today, Norman Seidler, an antitrust partner at Lord, Day & Lord of New York City, our counsel.

This may sound a little bit as an echo of Mr. Valenti's speech. I do think that some of my statements were on film here. But we have very much the same opinion as he does about this pending legislation.

Our export association was formed—actually began operations—in 1976, and last year it managed some $417 million in sales. These are commodities primarily used in agricultural chemicals, although phosphoric acid is used in industrial chemicals.

STATUS OF EXISTING ASSOCIATIONS

We heartily support the goals behind this proposed legislation to promote our Nation's export trade by extending the benefits of the antitrust exemption to the other entities competing in the world marketplace. At the same time, we share the concern expressed by Mr. Valenti that the present congressional initiatives may inadvertently result in discouraging trade efforts and, indeed, jeopardize the operation of existing Webb-Pomerene associations.

Mr. Chairman, time does not permit a detailed presentation of our views on the more technical aspects of the pending bills, and so, with the subcommittee's permission, I would ask that a written presentation which we have in preparation and will submit shortly be incorporated into the record.[1]

Our very practical concern is the absence in all of these bills of a true grandfather clause which would automatically continue the present Webb-Pomerene exemption in full force and effect for existing Webb-Pomerene associations. None of the bills provides this guarantee. All cast the present law aside and create new procedural standards and requirements.

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[1] See appendix 2, p. 314.

Indeed, the provisions of S. 2718 recently reported out of a Senate Banking, Housing, and Urban Affairs subcommittee, a version of which I understand is now before this subcommittee as H.R. 7436, would apparently subject all existing associations to an operational hiatus of over 3 months, which could be further extended upon challenge by the Justice Department or Federal Trade Commission.

We respectfully suggest that a requirement that existing associations in some way justify themselves in order to continue their existence is not supported by the record. On the basis of careful study, an advisory panel appointed by the President recently found that the exemption is of considerable importance to several industries and has served them well.

SUCCESS OF ASSOCIATIONS

I cannot speak for other industries, but our own association has helped our members meet their export needs and expand their sales opportunities.

We began active operations in 1976. In reliance on the protection afforded by the Webb-Pomerene Act we have gradually built a U.S.-based sales staff with expertise in marketing, transportation, and finance which all but the largest of our nine member companies would find hard to duplicate. Instead, they have committed themselves, and a budget of several million dollars per year, to the creation and development of a common export sales entity. Over this time we have established two overseas sales administrative subsidiaries and developed a network of commercial agents in the Far East, Asia, South America, and Europe. We have built sales contacts and goodwill in the export trade marketplace.

As an entity directly responsive to the needs of our members, I believe we have effectively and economically represented them on the world marketplace. We have been able to bargain as equals with State purchasing agencies and compete more effectively with foreign government-supported sellers. As I earlier noted, we last year sold $472 million of product and we hope to exceed a half billion dollars in sales this year. Individual sales are frequently in excess of $1 million and are sometimes as large as $25 million.

Not all of these sales are spot or short term; our ongoing market presence and reliability have enabled us to sell nearly one-fourth of our tonnage on an extended contract basis. We have passed the benefits of this scale back through to our members and, through them, to the U.S. economy.

Mr. Chairman, we and other Webb-Pomerene Associations have made positive contributions which tangibly demonstrate that we fulfill the needs of our members. Anything short of automatic continuation of Webb-Pomerene immunity unnecessarily and unjustifiably threatens our existence. I believe it would be unfair to force us to suspend our operations by removing our immunity during an application period, a period which might well be lengthened indefinitely by challenges from agencies hostile to the Webb-Pomerene concept. I believe the fact that we exist and function amply demonstrates—without need of further application whether pro forma or otherwise—that we fulfill a need.

NEED FOR FLEXIBILITY

It also would be unfair to limit our effectiveness by limiting the operational flexibility which we require, a flexibility on which our members relied before investing their time and resources, by imposing rigid administrative guidelines or confining operations to specified certified activities. Our members' commitment to an ongoing entity with a continuing presence and involvement in a changing export market requires the corresponding dependability of protection which only a statutory exemption can provide.

In closing, I would wish to emphasize that we firmly support those aspects of proposed legislation which would expand the exemption to include services and vest administrative responsibility in the Commerce Department where its benefits can be better promoted.

We believe the goal of increasing the area of certainty within which export trade associations safely may operate without fear of prosecution to be a laudable, although difficult one. But this cannot be at the expense of the achievements of the past. Absent a true and unequivocal grandfather clause which continues the present exemption intact for those who in reliance thereon have invested resources and foregone other opportunities, we must regretfully conclude that we cannot support any of the bills currently pending before the Congress.

EXPANDING WEBB-POMERENE ELIGIBILITY

Mr. BINGHAM. Thank you very much, Mr. Rohrer. This testimony has been helpful to me. I can assure you that as a sponsor of one of these bills, I had no intention of interfering with the operation of the existing Webb-Pomerene associations. I think you make an excellent case.

It may be that our procedures for certification are unduly complex, but in any event, I see no reason why associations that have been operating successfully under the Webb-Pomerene law should be disturbed. Since you are not asking for any additional privileges, I don't know why your operation should be disturbed by the bill.

We are seeking to expand the use of the Webb-Pomerene provisions and to involve smaller entities in export trade, but we certainly don't want to make more complicated the operations of those associations which are successful.

Do either of you gentlemen have any idea what the total exports under Webb-Pomerene associations amount to? You gave us the figures for your two industries, but I wonder if you have any idea of the total.

Mr. VALENTI. Yes, sir. I think that there are about 33 different associations which are operating under Webb-Pomerene today. I believe in 1980 they would have about $2.5 billion total Webb-assisted export.

Mr. BINGHAM. You made a very impressive presentation here. I find it persuasive. But there is still room, as I think you agree, for expansion of some form of Webb-Pomerene to other types of entities.

You have no objection to the provisions of these bills that involve other matters such as possible investment by banks, possible investment by States and localities, as long as they don't interfere with your operations, is that right?

Mr. VALENTI. I will speak for myself. Mr. Rohrer can speak for his association. My answer unequivocally is we have no objection. Indeed, I find it laudatory that this subcommittee tried to expand Webb-Pomerene.

It has been very successful for us, and therefore, in the long-term best interest of our country, I think it ought to be expanded, if it can be, to other industries to allow them to take advantage of Webb-Pomerene so that they are not constantly looking over their shoulder, they are not blocked, they are not restricted as long as they operate within the law, and you have monitoring authorities to do that.

So I laud the efforts to expand this. I am not knowledgeable about those areas, Mr. Chairman, but I think the motive is certainly to be applauded.

Mr. Rohrer. We agree, Mr. Chairman.

ASSOCIATION OPERATIONS

Mr. Bingham. I would like to ask one question about the operation of your associations, just so I might understand them better. How do you in the operation of your associations avoid giving to some of your members the feeling that their products are not being promoted as much as other members'? How do you deal with that?

Mr. Valenti. Again, I don't know anything about the phosphate chemical business, so I am going to speak about motion pictures and television. We do not involve ourselves in the actual contractual negotiations on a specific motion picture or a television series or a made-for-television movie or whatever.

We deal in making film treaties, television treaties with foreign governments, the blueprint under which we will operate, and we try to thwart any efforts to interfere with the operation of the member companies abroad who do their own selling.

For example, let me just tell you some of the protectionist measures that we have to fight that very few people know about. There are importer distribution quotas set up by governments for screen quotas. There are local printing requirements which are designed to protect local laboratories, or dubbing and subtitling restrictions or requirements, which is like trying to herd elephants constantly.

There are import duties, taxes and charges, rental limitations on what you can charge. There are prohibitions and limitations on film distribution by foreign interests. This is diverting income from the sale of our product under local hands by various stunningly imaginative ways. There are film subsidies financed by special levies on foreign films, which is a word for American films. There is compulsory purchase and distribution of local films.

In this little paper which is attached to my statement is a full litany of the inhibitions, the constant efforts that are being made by foreign governments to disturb, to strangle, to stunt the efforts to sell our products abroad. The job of my association is to foil those efforts as best we can, and then allowing, under the canopy of whatever blueprint we have organized within that country, each individual company to go in and market their product as best they see fit.

Mr. Bingham. So the total advantage you have given to the country's export trade is actually the sum of the exports by the individual companies within the umbrella of your association?

Mr. Valenti. Yes, sir.

Mr. ROHRER. We do it quite differently, Mr. Chairman. We are the marketing arm for nine companies. To the extent that they in many cases have eliminated their own export sales groups, we have combined them all into one office with our agency offices abroad. We actually do the marketing. The individual companies nominate to us at the beginning of the year how many tons of products they wish to move. This is now between 3 million and 4 million tons overall.

We assign each one a quota and try to adhere to the quota throughout the year so they have no problems with us, hopefully, during the year.

Mr. VALENTI. I would like to amend what I said because we do have two joint sales arrangements, Mr. Chairman. In the continent of Africa, we have what is known as AFRAM, which deals with the Francophone west and central African countries where the Motion Picture Export Association is the distribution arm.

Then we have AMPECA, which is in English-speaking West Africa, where we do the same thing. But exclusive of those two regional sales distribution arrangements, what I have said earlier will hold.

Mr. BINGHAM. As leverage in your negotiations, do you have the authority to embargo American films to a particular country?

Mr. VALENTI. Yes, sir. That is the ultimate weapon that we do not like to use, but it is an indispensable weapon for without it we would be a paper tiger.

Mr. BONKER. May I ask, Mr. Chairman, what countries have experienced an embargo for those reasons?

Mr. VALENTI. Mr. Congressman, do I have to do that? You know, we are dealing with sensitive political matters. I would be glad to give you those if I could. Well, at this present time——

Mr. BONKER. It is not necessary.

Mr. BINGHAM. We don't need that information for the record if it is sensitive. Give it to us privately.

Mr. VALENTI. It just makes it more difficult to deal with these countries.

Mr. BONKER. It is not germane to the legislation. I was just curious.

Mr. VALENTI. I will be glad to give you that detailed information, Mr. Bonker.

Mr. BINGHAM. Thank you.

Mr. Lagomarsino.

Mr. LAGOMARSINO. Thank you, Mr. Chairman.

With regard to your comment about your $700 million and Mr. Rohrer's comment about $400 million or $500 million, I am reminded of what Everett Dirksen used to say, that a billion here and a billion there adds up to real money.

As you say, it does add up to real money, $2.5 billion, and I think we could and should do a lot better than that.

Mr. VALENTI. This is surplus balance of trade.

Mr. LAGOMARSINO. Right. I agree completely with the point that both of you made, that in enacting this legislation, we should be mindful of the success there has already been, has already been accomplished, and should not penalize people or even put in doubt their situation.

I think we can take care of that, but we would certainly like to have your comments on the language that I am hopeful we will adopt. The grandfather clause is certainly one way to do that.

Let me ask you this. As I understand Webb-Pomerene, and I am certainly no expert on that, my understanding is that it provides some protection or some exemptions for what otherwise would be the law under the general antitrust provisions. Is that correct?

STATEMENT OF NORMAN H. SEIDLER, PARTNER, LORD, DAY & LORD

Mr. Seidler. That is certainly true.

Mr. Lagomarsino. In that regard, is it somewhat similar to the Volstead Act regarding agricultural properties in this country?

PROVISIONS OF WEBB-POMERENE ACT

Mr. Seidler. No. The present Webb-Pomerene Act provides an exemption from prosecution under the antitrust laws provided certain conditions are met. The exemption is basically conditioned on the provisos that the activity of the association not artificially or intentionally enhance prices in the United States, or be in restraint of trade in the United States.

Given that situation, the Webb-Pomerene association is free to operate in the export trade market—in the course of export trade. But it faces a constant threat that if at any time it fails to meet the test—the provisos of the Webb-Pomerene Act—it faces antitrust prosecution, which can be very serious. It can be a criminal prosecution of the individuals involving jail, very substantial fines or very substantial private penalties.

So it is a problem area for the company that wishes to operate within Webb-Pomerene. It must constantly be on guard. This, of course, is one of the key safeguards that does exist to assure that the companies operate solely within the Webb-Pomerene association prescription.

Mr. Lagomarsino. Does the Justice Department or the Federal Trade Commission ever make an attempt to try to prosecute a Webb-Pomerene association?

Mr. Seidler. Yes, there have been a few prosecutions. The most prominent of which was the *Minnesota Mining* case in which Judge Wyzanski basically delineated that which he felt an association could do within the Webb-Pomerene Act and that which it could not do.

At this point, that represents a guideline for us as antitrust lawyers in knowing what we can and cannot advise under the Webb-Pomerene Act.

Mr. Valenti. I think my counsel earlier told me that in the 63 years of the Webb-Pomerene Act, the FTC has prosecuted 12 cases. I think the last one was in 1957, if I am not mistaken.

Mr. Seidler. Those were administrative proceedings as distinguished from proceedings by the Department of Justice in the Federal courts. I think there are basically three decisions in the Federal courts relating to the Webb-Pomerene Act.

Mr. Lagomarsino. We certainly do share your concern that we not do anything that throws out whatever precedent there is. That certainly is a very simple thing to do, and if we were inadvertently, or on purpose, for that matter, to change the groundrules or the rules of those agencies, we would be disposed to try to do something about it. There may be some overzealous people.

Mr. VALENTI. Mr. Congressman, may I just offer some gratuitous advice here? I think there are really two aspects to increasing export trade. One is the congressional intent and the language of the bill. The second is something a little more dimly lit. That is a state of mind that exists in the Government agencies.

If they have a "let's get the rascal" attitude and are constantly harassing you, businessmen will take the least injurious of roads to travel and they are going to be a little bit wary. But if there is a state of mind that there is a congenial attitude by this Government, not only legislative but executive also, that the prime concern of this country over the next two decades is going to be the expansion of export trade.

The way the Japanese have done it is not merely with the convoluted distribution and hedgerows that they put up for products coming in, but there is a state of mind that I think is absolutely essential and crucial to expanding export trade, and I don't know how you infuse that kind of spiritual well-being in the Government.

Nonetheless, it needs to be there to implement your laudable efforts in the legislative arena.

Mr. LAGOMARSINO. I agree. It occurs to me that it is very difficult to export business unless you have business to export. I think there are perhaps some Members of Congress who are willing to do almost anything for exports, but they are not willing to do much for domestic industrial expansion or encouragement.

It reminds me, sort of, of the people—I have met quite a few—who are willing to export all kinds of arms to Israel but are not willing to have them for our own forces. It is pretty hard to export F-4's if we don't have them. So I think while you were certainly right to zero in on this, it is only part of a larger picture.

I do have a question, Mr. Valenti. You particularly complained about the complexity of some of these bills. It seems to me that the banking provisions make them extremely complex. Are you referring to those particularly when you talk about that?

Mr. VALENTI. I was referring to the certification procedures, which are thick with all kinds of barriers. I was merely offering the judgment that the simpler you make it for industries to form Webb-Pomerene associations—I was directing my comments to that particular aspect, not the export trading companies—the more likely you are to have an accumulation of industries who have formed capital in this country to make the products which they can then export abroad. It makes it more reasonable for them to get into the Webb-Pomerene export association business.

ENCOURAGING FORMATION OF TRADE ASSOCIATIONS

Mr. LAGOMARSINO. Why do you think more associations have not been formed under the Webb-Pomerene Act?

Mr. ROHRER. Constant fear of antitrust.

Mr. Valenti. I think one of the reasons is precisely that. I also will have to tell you that I don't think business is totally immune from criticism. I think some industries simply haven't gone to the trouble of doing it. It is not an easy thing to do.

It takes a concerted effort by leaders within that industry to do it. But I think basically I would say 80 percent is this wariness, cautionary air about the possibility of the long arm of the Justice Department clubbing you when you are sitting quietly looking at your ledgers.

Mr. Lagomarsino. Thank you.

Mr. Seidler. I would like to mention, Mr. Congressman, it is not alone the Department of Justice, but under the present law, a private individual could sue for treble damages, or a class action could be brought which also represents a substantial threat to the associations.

Mr. Bingham. Mr. Bonker?

Mr. Bonker. Let me follow up on what Mr. Lagomarsino asked, and on which you articulated excellent responses. The Senate, after a series of hearings, posed the same question and concluded that there were four reasons why more trade associations were not formed under the Webb-Pomerene Act, one being that the private sector lacked sufficient product market domination in the foreign marketplace.

Second, the American business community placed top priority on domestic consumption and has not been as active in the foreign market. Third, the ever-expanding U.S. service industries have been excluded from qualifying for the antitrust exemption and are being replaced instead by joint ventures and cooperative efforts.

Then, it said, fourth and more importantly, the Department of Justice and, to a lesser extent, the FTC have been perceived by the business community as exhibiting a thinly veiled hostility toward Webb-Pomerene associations.

Then also, the vagueness of that act leaves uncertain what activities will constitute a substantial restraint of domestic trade. So I think the Senate, based on its hearings and its own staff work, concluded what you have just shared with the subcommittee. I think that title II of that act will have to be modified in some way if we are going to remove the uncertainties, the inhibitions, and vagueness or whatever it is that inhibits the formation of these associations.

So I guess we will attempt to do that in our requirement that an antitrust exemption be made contingent upon a certification procedure that is more simplified and a little more encouraging than what we now have. Presently you have to receive approval from both the FTC and the Department of Justice.

CERTIFICATION PROCEDURES

Mr. Seidler. Just the FTC. A filing is made with the FTC——

Mr. Bonker. A filing is made with the FTC, but the Justice Department actually approves the exemption.

Mr. Seidler. Under the present law——

Mr. Bonker. The Senate would shift that to the Department of Commerce, and that Secretary would consult with the Department assisting the FTC. Do you find that procedure a little more acceptable? If not, what procedure would you like to see in place in this association?

Mr. VALENTI. Now that you ask me, I think it ought to be a simple statement that Webb-Pomerene should continue as it is. It should now be extended to service industries with the focal point of Webb-Pomerene in the Department of Commerce. That is what I would do because the function of the Justice Department, Mr. Bonker, it seems to me, is in law enforcement. That is their role, mandated and chartered by the Congress, to enforce the law, so they are going to be doing that whether they consult or not.

When you have a consultative procedure, it seems to me that you then add one more barrier. But if the Department of Commerce would take applications and if the industry has certified that it needed Webb-Pomerene that should be sufficient.

If it developed somewhere along the line that there is some violation or some illegality, then the Department of Justice is there to make whatever revisions are necessary, civilly, criminally, or whatever. That is a simple way to do it.

Mr. BONKER. It also seems to be the proper way. The Department of Justice by its very nature is going to be adversarial in these matters, but the Department of Commerce should actually be promoting the business community. You have got to have one branch of government that is going to serve those purposes.

I think you are absolutely right that the Justice Department, if it sees an opportunity and some proprietary interest, will move at least with more legal actions.

Mr. SEIDLER. If I might correct the record, the Department of Justice under present legislation does not approve the existence of a Webb-Pomerene association. There is no approval provided at all. It does require a filing with the Federal Trade Commission of certain detailed information by the Webb-Pomerene association.

The Department of Justice's only function, basically, is to follow the existence of the Webb-Pomerene association and bring an action where it feels it has exceeded its position under the Webb-Pomerene Act. There is no specific approval.

Mr. BONKER. Under the Senate bill, the Department of Justice would have a greater role in that it would consult.

Mr. SEIDLER. That is correct.

Mr. BONKER. You would not want to see that, or you think maybe it is unnecessary?

Mr. SEIDLER. I think it is probably unnecessary. I think that is really the answer. If the Department of Justice is to be consulted, its views should be taken into account by the Secretary of Commerce rather than providing for a litigation in advance of certification by the Department of Justice being able to go into court and seek a restraining order.

Mr. BONKER. Do you think we ought to have in place eligibility criteria that would become the basis for the Department of Commerce issuing the certificate?

Mr. VALENTI. Speaking for my own association, I don't see any need for it, Mr. Bonker. I am saying, as I said in my statement, I think people in a particular industry know better than anyone else whether there is a need. The problem that you find, which sometimes is exasperating—and sometimes, as my old boss used to say, you just hunker down like a jackass in a hailstorm and take it—is to get involved with procedures that really don't need to be there.

I don't know of anybody in the Justice Department or on the Federal Trade Commission who really understands the motion picture and television problems in foreign markets. They just don't understand it. Therefore, it is very difficult for them to make judgments about who is eligible and who is not when they don't understand the marketplace.

If I were trying to deal with a Phos Chem association, I would be equally ignorant of their marketplace and not able to make judgments about whether they are eligible or not. They would know best, it seems to me, if they could make use of an instrument that you have made available to them.

Mr. **Bonker.** Just one last question—a more practical one. When you are involved in the distribution business and you come into a country that wants to purchase only your top-rated films, and still you have an inventory of good and average films, how do you work that out as an export trading association?

Mr. **Valenti.** We wouldn't allow that. We don't do business with any country which would attempt to restrict us that way. We simply wouldn't do business. We don't do business with government monopolies.

Mr. **Bonker.** At some point these things would have to be negotiated. They have certain films they would like to have brought in.

Mr. **Valenti.** Oh, excuse me, Mr. Bonker. They do have censorship authorities that we abide by. We don't try to invade a country with a film that a country doesn't want to have. I think that we may be, and Japan, and to some extent West Germany, may be the only countries in the world where there isn't some kind of government censorship, ranging from mild to very severe.

Mr. **Bonker.** I wasn't referring to that kind of censorship.

Mr. **Valenti.** You were talking about quality.

Mr. **Bonker.** Just quality of film.

Mr. **Valenti.** We don't do that. The trade agreements we make with countries allow us to go into the marketplace and bargain with exhibitors and theater owners, and deal with them on an individual basis. Our companies have people stationed all over the world, salesmen who try to go into Venezuelan or Brazilian or French or Italian theater chains and deal with them on that basis.

Mr. **Bonker.** Thank you very much. Your testimony has been enlightening.

Mr. **Bingham.** Thank you very much, gentlemen. I appreciate you being with us.

Now I would like to call on Mr. Charles Levy, vice president of the Emergency Committee for American Trade.

I would like to welcome you, Mr. Levy, as a former staff member of the Foreign Affairs Committee.

STATEMENT OF CHARLES S. LEVY, VICE PRESIDENT, EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. **Levy.** Thank you. It is a pleasure to come back to the subcommittee, particularly, as a witness.

ECAT is an organization of 64 U.S. companies with extensive international business operations. In 1979, worldwide sales by these companies totaled $450 billion and they employed nearly 5 million people.

Because ECAT member companies are among the largest U.S. exporters, they are well acquainted with the difficulties involved in establishing a viable export operation. ECAT members are also very much aware of the importance of exports to our national economic security.

Because of the complexity and cost of developing an international marketing structure, arranging for export financing and overseas transportation, and understanding foreign laws, tens of thousands of U.S. businesses compete only in our vast domestic market. Our ballooning balance of trade deficits would be substantially alleviated if these U.S. firms would take advantage of overseas market opportunities. Legislation designed to promote and facilitate the formation of export trading companies and export trade associations provide the means for U.S. businesses to focus on export opportunities.

ECAT, therefore, supports S. 2718, title I of which is the Export Trading Company Act of 1980 and title II is the Export Trade Association Act of 1980. We also support the legislative initiatives in this area undertaken in the House by Congressmen Bonker, Bingham, LaFalce, AuCoin, Reuss, and Neal. The body of legislation introduced in the House and Senate provides constructive mechanisms to encourage and aid the entry of American business firms into international export markets.

The legislation being considered by this subcommittee would facilitate the formation of export trading companies. These companies would provide the export-related services which thousands of U.S. businesses, particularly small and medium sized companies, need in order to realize their export potential.

BANK PARTICIPATION

An essential element of the export trading company legislation is the provision for ownership of export trading companies by banks, bank holding companies and international banking companies. In this regard, we are encouraged to see that a number of Congressmen this afternoon have expressed an interest in adding such provisions to the legislation pending before the subcommittee.

Banking organizations have two resources which are essential to establishing a viable export trading company. First, through their retail banking operations, banking organizations are able to reach out to large numbers of small- and medium-sized companies who may manufacture exportable products.

Second, through their international branches and foreign correspondent banking relationships, banking organizations are in an excellent position to identify potential foreign markets and customers.

Some concern has been expressed to this subcommittee that export trading companies with bank ownership will have an adverse competitive effect on small nonbank trading companies. This has not been the case in Japan where there are nine dominant export trading companies which are interrelated with major commercial banks. In spite of this concentration, Japan has, according to the United States-Japan Trade Council, approximately 6,000 trading companies.

As Jerry L. Hester, president of International Trade Operations, Inc., a small export trading company, pointed out to the Senate Banking Subcommittee on International Finance, and I quote:

> The biggest single exporting deterrent to an active growing export management firm is its ability to have readily available short-term capital reserves in order to bid competitively and move goods quickly.

In short, without adequate and timely financing, U.S. exporters are at a serious competitive disadvantage. To a limited extent export financing can be made available through the Export-Import Bank. However, the bulk of export financing must come from private commercial banks.

Export trading companies with commercial bank participation provide an appropriate and efficient mechanism to increase the availability of private export financing. In this regard, many small- and medium-sized export trading companies could benefit from bank participation through joint ventures.

H.R. 5061 would contribute to the expansion of U.S. exports by enhancing the use of Webb-Pomerene type export trade associations. By removing ambiguous and confusing language and including services within the scope of an export related antitrust exemption, U.S. companies will be more disposed to enter into international cooperative ventures. As a result, these companies will be able to increase their competitiveness in world markets.

While we wholeheartedly endorse the enactment of export trading company and export trade association legislation, we do offer the following specific comments concerning their contents.

THIRD COUNTRY TRADE

One, export trading company legislation, or its accompanying legislative history, should clarify the extent to which an export trading company has the authority to engage in third country trade and the importation of goods and services into the United States.

For example, a growing volume of international trade now involves barter arrangements and third country trade. Without clear authority to import into the United States, a U.S. export trading company could find itself at a distinct disadvantage in participating in barter transactions.

CRITERIA FOR STARTUP ASSISTANCE

Second, a number of the bills under consideration include provisions which would increase the financial leverage of existing export trading companies and stimulate the formation of new export ventures by providing guarantees and loans for operating expenses and initial investments in export-related facilities, and guarantees for export accounts receivable and inventories.

If these two new programs are to be utilized effectively, the standards by which the administering agency evaluates the need for guarantees or loans must be very clearly defined.

As presently drafted, a number of these provisions require the administering agency to determine whether the assistance provided would facilitate the expansion of exports that would not otherwise have occurred. In addition, the agency would have to determine whether the export trading company is unable to obtain sufficient financing on reasonable terms from other sources and, with respect to guarantees, that such guarantees are essential to enable the company to obtain adequate credit to continue normal business operations.

Without clarification, export trading companies may encounter difficulties in demonstrating their need for assistance from the administering agency. As a result, the agency may either be reluctant to use its new authority or, alternatively, the administrative burden on applicants would be so great that export trading companies would not apply for the loans or guarantees.

STATUS OF EXISTING ASSOCIATIONS

Finally, as pointed out by Mr. Valenti and the other previous witnesses, H.R. 5061 presents a problem with respect to its legislative approach. Unlike title II of S. 2718, H.R. 5061 would repeal, rather than amend, the Webb-Pomerene Act.

This approach would undermine the body of law that has been developed over the years with respect to the Webb-Pomerene Act. In particular, repeal would vitiate the substantial effects test used by the courts in determining whether the activities of an export trading company had a domestic impact.

Also, and perhaps most important, repeal of the act would place existing Webb-Pomerene export trade associations in legal limbo.

From time to time, President Carter has highlighted the importance of exports to the future health of the U.S. economy and announced his dedication to developing a coordinated national export policy. To date, little has been done by the executive branch.

U.S. business is looking to the Congress to play a major role in formulating a national export policy. The legislation before this subcommittee is an important first step in developing such a policy.

It is not clear how many export trading associations or export trading companies will be formed under the proposed legislation. But it is clear that for those companies which utilize either form of doing business, these two mechanisms will be important and immensely useful in enhancing their competitiveness in world markets.

Thank you.

Mr. **Bonker** [presiding]. Thank you, Mr. Levy. I know that you are in support, then, of all the bills before us but you would like to see some refinements made.

Mr. **Levy**. That is correct.

Mr. **Bonker**. Did you testify on the Senate side?

Mr. **Levy**. Yes; I did.

Mr. **Bonker**. Did you offer suggestions or amendments that were eventually incorporated?

IMPORTANCE OF FINANCING

Mr. **Levy**. ECAT offered some of the same suggestions outlined this afternoon. However, the administration was not too enthralled with the concept of providing guarantees from the Export-Import Bank for financing inventory and accounts receivable.

One of the most important factors in exporting is financing. To place this need in the context of an industry that has experienced some difficulty today, I don't think an automobile dealer could sell cars if it didn't have a floor plan financing arrangement whereby it had an inventory of cars available for customers to come in and buy.

I think the same thing is true for export trading companies. If they don't have inventory on hand, they may not have a competitive edge.

Mr. **Bonker.** So that is why you are suggesting that export financing really must come from commercial banks.

Mr. **Levy.** I think it is very important.

SAFEGUARDS ON BANK PARTICIPATION

Mr. **Bonker.** Congressman AuCoin testified to that point earlier, and he will be offering some language. At least he has already in his legislation a provision which allows banking participation, albeit it with some limitations to see that banks don't become too heavily involved.

Do you see a need for limiting banks' involvement?

Mr. **Levy.** I think that the limitations that were reported out of the Banking Committee in the Senate are fair limitations which would permit bank participation while at the same time provide safeguards for the security of the U.S. banking system.

I believe the banks probably will be able to live with the Senate Banking Committee provisions.

Mr. **Bonker.** What about a provision which would prohibit banks from making any loans to any trading companies in which the bank holds interest and to customers of such on terms more favorable than those for other borrowers?

Mr. **Levy.** I think that is an equitable provision.

Mr. **Bonker.** You wouldn't have any objection to that?

Mr. **Levy.** No.

THIRD COUNTRY TRADE

Mr. **Bonker.** One other point. On page 4, your first comment is that we should clarify the extent to which an export trading company has authority to engage in the business of importing goods and services. To my knowledge, there is nothing in the legislation which would prohibit that. I think the Senate had a provision earlier and just decided to drop it.

Mr. **Levy.** That is right. The Senate Banking Committee also added in its report language a comment that export trading companies would be able to participate in third country trade. I think such report language provides a degree of certainty in the legislation and the legislative history. Companies will understand that they can participate in barter and third country trade.

Mr. **Bonker.** In other words, they wouldn't be precluded from this.

Mr. **Levy.** That is right. Companies could become nervous since you have a bill called the Export Trading Company Act and need some guidance.

Mr. **Bonker.** Mr. Lagomarsino.

Mr. **Lagomarsino.** I would just say with regard to that last point I think you should study that very carefully because as I understand a recent Supreme Court decision, legislative reports don't mean very much.

Mr. LEVY. That has always been a question.

Mr. LAGOMARSINO. It always has been a question.

Mr. LEVY. The courts have always questioned the weight given to legislative history.

Mr. LAGOMARSINO. I would think if we really wanted to clarify that, we probably ought to think of some way to provide something in the bill itself, as well.

Mr. LEVY. It could be provided for in the findings.

Mr. LAGOMARSINO. Now, would you support a grandfather clause for Webb-Pomerene associations? Do you think that is the way to go?

Mr. LEVY. I think if you were going to repeal the Webb-Pomerene Act as opposed to amending it, it is absolutely necessary. If you repeal the act you will put existing associations in legal limbo. Under that circumstance a grandfather clause is essential.

Mr. LAGOMARSINO. Thank you.

Mr. BONKER. Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. BONKER. You get double time for missing out on the last one.

Mr. GILMAN. Thank you, for the minority side.

I welcome Mr. Levy back to our committee.

Mr. LEVY. Thank you very much. It is good to see you again.

BANK PARTICIPATION

Mr. GILMAN. I am a little bit concerned about how extensive the new authority will be under these proposed statutes. I know that every time domestic banks get involved in another business activity, the industries affected, transportation, insurance and in many other areas, all claim that our banks are becoming too involved in these businesses.

How do you think that our private sector is going to feel about banks getting into the import business?

Mr. LEVY. Import or export?

Mr. GILMAN. Let's start with the import business.

Mr. LEVY. I think that basically the import side of the export trading company will be fairly limited and will probably occur primarily in terms of barter arrangements.

Mr. GILMAN. Do we see any of those limitations spelled out in the legislation?

Mr. LEVY. As the Senate Banking Committee pointed out, the principal purpose of an export trading company would be exports. The report has a 50-percent test, and I think export trading companies could satisfy that criteria only by being principally oriented toward exports.

Mr. GILMAN. Let's examine the export side of it. If we set up a trading organization, we are into all sorts of endeavors. There is no limitation. Isn't that true?

Mr. LEVY. I think the concept of an export trading company is really one of facilitating exports, as opposed to manufacturing. I don't see any authority in the bill or why an export trading company would want to become a manufacturer.

Mr. **Gilman**. But if they are involved in the sale of goods overseas.

Mr. **Levy**. The competition in terms of domestic competitors would be other export trading companies. As I pointed out, Japanese and European trading companies have not had an adverse effect on competition among trading companies in their respective countries. I don't know why this would have an adverse effect in the United States.

The key to exporting is financing. The business of banks is financing. They know the business. I think this will help facilitate exports by providing probably the best weapon we have in terms of meeting foreign competition, and that is extensive and strong banking organizations.

Mr. **Gilman**. You don't see vertical integration that would become harmful to the field by incorporating banking interest in the export trading and going right back into manufacturing?

Mr. **Levy**. No, I don't think so because as I read the legislation it is not authorizing banks to take equity positions in manufacturing companies in this country. The manufacturing companies would go to an export trading company when it doesn't have the resources to have its own foreign marketing operation.

Mr. **Gilman**. Does the manufacturing company then become part of the export trading association?

Mr. **Levy**. I think that if it wanted to, it probably could under existing legislation. But the bank participant would own the export company jointly with the manufacturing company. The bank would not own equity in the manufacturing company.

Mr. **Gilman**. Could you foresee a situation where the manufacturer then was a member of the export trade association and got the bank involved, and you had the distributor overseas involved, so you have really the whole integrated system from start to finish?

Mr. **Levy**. Companies can now use the Webb-Pomerene Act to form export trade associations, and the present legislation would extend that antitrust exemption to export trading companies.

Mr. **Gilman**. By this legislation we intend to extend it to banks. That isn't my question.

Mr. **Levy**. But in terms of vertical integration, that raises antitrust questions, and the concept behind the Webb-Pomerene Act is export activities. Businesses who want to combine for the purpose of exporting should be exempt from antitrust.

Mr. **Gilman**. We are not going to bring banks under Webb-Pomerene, are we?

Mr. **Levy**. I think you would bring banks under in terms of the export trading company.

Mr. **Gilman**. I am talking about under the existing Webb-Pomerene Act.

Mr. **Levy**. No, we don't.

Mr. **Gilman**. We are extending that privilege to include banks. What I am asking you is should we enlarge that concept to such an extent that we bring harm to competition by bringing the whole financial structure to the export industry?

Mr. **Levy**. I don't think you are doing any harm in terms of domestic competition. I think what you are doing is strengthening the ability of American companies and banks to compete abroad. I think there are safeguards in the existing Webb-Pomerene Act and in the amendments that are proposed.

But if there is a spillover into domestic competition, the export trading company or export trade association would lose its eligibility under the Webb-Pomerene Act and could be sued under the antitrust laws.

Mr. GILMAN. What is the rationale for the necessity of having a bank a partner of the export trading company? Why couldn't you utilize the resources of the bank without making it a partner?

Mr. LEVY. First, banks are prohibited from providing commercial services other than banking services by the Glass-Stegall Act. Second, I think there has been a natural reluctance among banks to get involved in export financing to a significant extent for a number of reasons. In particular, banks are wary of financing inventory that may go abroad. If they were part of the trading company, they would be able to have a full review over that export transaction. As a result, I think they would feel much more comfortable in loaning the money on that project.

Mr. GILMAN. Especially if they can get a higher profit.

Mr. LEVY. Yes; there is a profit motivation. That is why probably banks would want to get involved.

Mr. GILMAN. It certainly places the financial structure to their advantage as having this a part of the exporting arrangement.

Mr. LEVY. This is what has given the Japanese a very great lift up in exports. Basically, a number of the Japanese trading companies have existing lines of credit with banks that don't need, as I understand it, prior approval.

Mr. GILMAN. How are we protecting the smaller domestic corporations who may want to do some business overseas and have the advantage of becoming part of an exporting company?

Mr. LEVY. I think several ways. First, a number of bills would provide through the Eximbank a program of guarantees of financing by commercial banks of inventory and accounts receivable that would permit a small trading company to rollover its accounts receivable and finance its inventory and, as a result, have some adequate cash reserves.

Mr. GILMAN. Even if that inventory is overseas.

Mr. LEVY. That is right, as I understand it.

Mr. GILMAN. Then why would you need this sort of arrangement?

Mr. LEVY. I think there is certainly a limit to how much the Export-Import Bank can guarantee. If we want to have a quantum jump in exports, you are going to have to have private banks involve themselves without guarantees.

Mr. GILMAN. I thank you for the information. I still have some reservations about all of this.

Mr. BONKER. Thank you, Mr. Gilman.

Mr. Levy, thank you very much.

Mr. LEVY. Thank you very much.

Mr. BONKER. We will now have a panel of witnesses, and we would like to have come to the witness table Ms. Carie Cable, Mr. Edward Lange, and Mr. Gordon Ebling.

I believe we will begin with Ms. Cable, who is representing Dr. George Taylor, Washington Council on International Trade.

We have a vote. I think that to avoid interruption, we will recess just for 10 minutes, get the voting out of the way and come back. That way, we can finish the hearing. Otherwise we will have to stop in a few minutes.

If that is agreeable with my colleagues, we will adjourn the subcommittee for 10 minutes.

[Whereupon, a brief recess was taken.]

Mr. BONKER. The subcommittee will come to order.

We were about to begin with Ms. Cable, who is representing the Washington Council on International Trade.

STATEMENT OF CARIE CABLE, PROGRAM MANAGER, WASHINGTON COUNCIL ON INTERNATIONAL TRADE

Ms. CABLE. Thank you, Mr. Bonker.

I am program manager for the Washington Council on International Trade and am delivering the testimony of Dr. George Edward Taylor, president of the council.

The Washington Council on International Trade is a nonprofit, nonpartisan organization which was established in 1973. Its primary purpose is to raise the level of understanding of the role of international trade in the economy of the State of Washington, a State in which one in every five jobs is related to international trade.

The council is financially supported by private enterprise, but the board of directors also includes representatives from government and the academic world. The council passes no resolutions and does not lobby for specific pieces of legislation or for special interests. It provides information, stimulates research, and works with the educational system.

The council members welcome in principle any serious effort such as House bill 7230 to explore ways of improving our trading position and to foster free competitive international trade.

H.R. 7230 deals with trade promotion and trade companies. The council members are making their positions on trading companies known through such organizations as the Emergency Committee for American Trade (ECAT) and the Washington Bankers' Association, or through private testimony.

There will be further opportunities, I hope, to testify on these very complex recommendations. In the meantime, I wish to call your attention to the equally important trade promotion objectives of House bill 7230.

DEVELOPING AN "EXPORT MENTALITY"

I believe one of the most important factors contributing to America's weakness in international trade is the absence of what has been called an export mentality. This point is stressed in a recent Japanese report to the Japanese Government on the trading posture of the United States. Most Americans are either ignorant of, or indifferent to, the contribution of two-way trade to the health of the economy. The general public is unaware of our international economic interdependency, as well as the matrix of trade operations.

This ignorance is illustrated, for example, by a recent Harris poll, in which 60 percent of the respondents stated that they were unaware that we import oil and that they believed the United States to be self-sufficient in oil supplies.

This same ignorance is fostered by an educational system in which a person can spend 8, 12, 16, or more years and never attend a class on economics or principles of international trade.

Ignorance of the role of exports in promoting economic stability and economic growth is widespread not only among the lay population, but the business sector as well, especially among small- and medium-size producers and services. The vast majority of business persons are ignorant of export markets and export procedures. They do not know that there are other economies in which they can participate with a modicum of risk.

A consistent cash flow is the key to success for any business. Those businesses participating in multiple economies have the best chance for consistent cash flow since they can take advantage of independent or related alterations in business cycles.

The American habit has been to export only when domestic sales are poor or when surplus inventory is on hand. Whether businesses are large enough to establish market shares abroad or not, business persons must be informed about the advantages of participating in multiple economies on an ongoing basis.

Exports must be explained in ways that make exporting an accepted and integrated element of business planning, not simply a stopgap measure or side operation. Furthermore, vigorous efforts must be undertaken to educate producers and services about the procedures for exporting.

As tactical measures the various bills introduced may be successful. However, I believe that as strategic measures they will fall short of full effectiveness unless amended or unless companion legislation, designed to nurture public awareness of how the business sector operates, is also introduced.

What can government do within existing channels to promote exports and to develop a climate of public opinion favorable to increased two-way trade?

I do not believe that it is in the public's best interest for Government to participate directly in international trade, but I do believe it is in the public's best interest for Government to participate in educational programs about trade for the general public.

First, I recommend that the Departments of Commerce and Education collaborate in designing and implementing high school and college level educational programs on the operation of international trade. An example of such a program is the unit called "Trees and TVs," which is available to high schools in the State of Washington. I earlier submitted to the chairman a copy of this unit.[1] The unit was devised and implemented by the WCIT with the help of the Washington Council on Economic Education. The WCIT conducts an annual 3-week intensive seminar on the "Theory and Practice of International Trade" for social studies teachers in high schools in order to bring them up to date on this subject. This seminar has been offered every summer since 1977 and draws teachers from Oregon and Idaho, as well as from throughout the State of Washington.

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[1] "Trees and TVs in the International Marketplace" is retained in subcommittee files.

Second, I recommend the establishment of a central office at the Department of Commerce or Department of Education to work with State offices of public instruction in the development of educational programs relevant to each State's particular trade situation.

Third, I recommend that local U.S. district export councils be used to facilitate a nationwide export awareness campaign. The best model to date of the success of a local U.S. district export council's efforts in this area is that of the Arizona council. I encourage the subcommittee to study the Arizona Council's project.

I believe the Department of Commerce, possibly through the Export Promotion Bureau, should undertake immediate action to educate the business sector about the need for and advantages of exporting. To accomplish this, I recommend the following programs.

First, I believe that vigorous efforts must be made to offer seminars and workshops of substance and specific focus to the business sector.

One set of workshops should be on export opportunities in particular markets and with specific trading partners.

One set of workshops should be conducted for small- and medium-sized businesses on finding foreign buyers and sales agents abroad. The new computerized Worldwide Information and Trade System (WITS) recently implemented by the U.S. Department of Commerce would be an excellent starting point for such workshops.

One set of workshops should be focused on the functions and operations of existing intermediaries and services for exporting, such as export management companies, freight forwarders and the international departments of banks.

One set of workshops should explain various financial arrangements and possibilities for special export loans available through the Small Business Administration and the Export-Import Bank. Letters of credit often provide better protection and faster cash flow for sellers than the 30- to 90-day collection procedures commonly used for domestic sales, yet letters of credit are not adequately understood by potential exporters. Export financing needs to be better explained.

One set of workshops should be conducted on export documentation, including documents for freight insurance and credit insurance, and on the step-by-step movement of goods from producer to end user in a foreign country.

One set of workshops should be conducted on the organization of trade responsibilities within Government departments and agencies. Exporters must become familiar with Government services as well as Government responsibilities. The morass of export regulations must be demystified, if not reduced.

EXPORT INCENTIVES

Efforts to educate the public and the private sector to accept and engage in exporting must be matched with efforts within the Government to make exporting simpler and more attractive. I believe any new legislation on trade promotion should include three elements.

The first element is streamlining of paperwork generated by the U.S. Government and directly related to the exporting of goods by any single business. None of the proposed bills provide for decreased paperwork. In fact, it is safe to anticipate increased paperwork leading to confusion, frustration, and possible abandonment of export attempts.

The second element is the liberalization of export licensing regulations.

The third element is the provision of incentives for exporters, both to producers and to the services. Tax laws should be revised to encourage exports and the establishment of sales offices and manufacturing investments abroad, not to penalize those who work abroad and strive to increase U.S. market shares in foreign countries.

I commend Congress and our Washington State congressmen for exploring new ways to promote exports. The main lesson we should learn from our competitors is not necessarily the manner in which they conduct trade but the substance of the cooperative relationship between Government and the private sector. The positive attitude toward business and toward Government cooperation begins where all attitudes are formed, with the education of the young and the informing of the public.

Thank you.

Mr. **Bonker**. Thank you, Ms. Cable. You focused on an area that we should not overlook, education. I think that is essential, particularly at levels that will encourage younger people to move into this area.

We will now hear from Mr. Lange, who is from Seattle and, as I understand it, will be representing the Washington Bankers' Association.

STATEMENT OF EDWARD N. LANGE, PARTNER, DAVIS, WRIGHT, TODD, RIESE & JONES

Mr. **Lange**. Thank you, Mr. Congressman.

Our firm serves as general legal counsel for, and I appear today on behalf of, the Washington Bankers' Association, which is the trade association of commercial banks in the State of Washington.

I wish to point out that included in our active membership are 10 foreign banks organized either in Japan or Great Britain or Korea, who are doing business in the State of Washington. We welcome them into our State. We have provisions in our law enabling them to have branch offices in our State, and we continue to enjoy their presence and their active and professional competition for international business.

Needless to say, our State is vitally interested in foreign trade, as prior witnesses from our State have indicated. The banking industry, the Washington Bankers' Association, sees a need for trading companies and wishes to support the bills and the concept of those bills which you have before you.

We believe that such companies do provide a means for organization that will better serve small- and medium-sized businesses and provide financial resources and expert know-how to carry on a successful export business.

We have observed at first hand the successful operation of trading companies organized in foreign countries. We believe to successfully compete with the foreign companies, our resources can be similarly organized to take advantage of our ingenuity, productivity, and efficiency.

The Bankers' Association supports legislation stimulating export trading companies, whether or not they provide for bank or bank holding company investment and participation. We prefer and desire legislation which would enable financial institutions to participate. We favor removal of the existing barriers against such participation.

Our basis for this is that we have observed, first hand, foreign, particularly Japanese, financial institutions successful in managing their relationship with related trading companies. We compete day to day with these operations and we believe that our financial institutions in this country, if granted such incentive, can more successfully compete to the benefit of all.

Appropriate limits can be imposed upon such participation. We would favor the Senate bill provisions rather than Representative AuCoin's position. Again, we wish to express our appreciation for your consideration of these bills and for inviting us to participate.

Mr. Bonker. Thank you, Mr. Lange, for your comments.

Now we will move to Mr. Ebling, who is vice president and treasurer of Management Services International.

STATEMENT OF GORDON C. EBLING, VICE PRESIDENT AND TREASURER, MANAGEMENT SERVICES INTERNATIONAL, INC.

Mr. Ebling. Thank you.

I have a prepared statement that I am going to read, but before I read it I would like to point out that there are several comments in my statement that contradict previous testimony. The most conspicuous of the previous testimony I am going to contradict is the fact that I am a representative of an export trading company that operates out of Seattle, and Bob Anderson indicated that there were no such things.

Mr. Bonker. Well, you are living proof that there is.

We have had trade managers testify on legislation in general, and we have found that they are not all that supportive of it; so we will be anxious to have some other testimony today.

Mr. Ebling. It is a privilege to be given the opportunity to appear before this subcommitee to present testimony in regard to the Export Promotion and Export Trading Company Act of 1980, and the closely related bills now under consideration by Congress.

My name is Gordon C. Ebling, and I am the vice president and treasurer of Management Services International, Inc., a Seattle-based export trading company. During my 25 years of private sector business experience I have also been manager of International Planning and Business Development for Boeing Computer Services, and a senior staff member of Boeing International Corp.

I have thus been involved both as a producer of exportable goods and services and as a middleman exporting on behalf of others.

Mr. Bonker. Mr. Ebling, I am going to interrupt for a moment. In view of the time, and we also have another vote, I doubt whether we can continue this hearing. We have your prepared statement for the record, and if you could comment briefly on what your primary concern is with the legislation, that would be helpful.

Mr. Ebling. All right. The primary points that I would like to make are, No. 1, there is in existence today in the United States an export trading company industry which consists, I am sure, of several thousand firms. Some of them are very small.

I spoke yesterday with two firms in New York who employ in excess of 100 people each. In other words, there are some quite large. I don't feel that banks entering into the trading company business is a proper function of banking; I don't think it solves the basic problem in that we can obtain financing for an export proposition if it makes sense.

We can take it to a bank and get financing for it. The reason that we can't get bank financing in many cases is because the deal doesn't hold together, doesn't make sense, and no bank is going to put their money into their own export trading company on a deal that doesn't make sense either, that isn't profitable.

Third, the real problem with exports from the United States is not at the level of banking and of export trading companies, although there are problems. The real problem is the producer who has no incentive to export. As a matter of fact, he has many disincentives to export. I think the creation of a very strong export trading company industry would not really do anything significant for solving the fundamental problem, which is a lower level, if you will, in that the producer has no reason to export.

[Mr. Ebling's prepared statement follows:]

PREPARED STATEMENT OF GORDON C. EBLING, VICE PRESIDENT AND TREASURER, MANAGEMENT SERVICES INTERNATIONAL, INC.

Management Services International provides a broad range of services directed at international business development. We function as a business consulting firm by providing market assessments, developing export strategies, analyzing foreign investment opportunities and evaluating tax considerations for producers of goods and services. We function as an export management firm for producers who would like that service and we export for our own account a wide spectrum of product that we obtain from producers that have little or no interest in direct involvement in the export market. The bulk of our direct exports are agricultural commodities and processed foods, and are handled by our food products international division.

In reviewing previous testimony relating to this bill it is easy to gain the impression that there are presently no U.S.-owned trading companies available to assist U.S. producers with the export of their goods and services. This is totally incorrect. Although good data is difficult to obtain we would estimate that there are as many as 100 such companies in Seattle alone. The actual number depends on the definition of "export trading company" that is used. Many are small and oriented toward one product, while others are broad based both in regard to product orientation and the range of services offered.

In New York City the number of export trading companies is probably in the thousands. I met yesterday with officials of two of these companies to better understand their capabilities, and it is impressive.

These firms have been operating as export trading companies for over 20 years. They each employ about 100 people in their New York offices, as well as people in overseas offices in key markets. One of the firms has a financing subsidiary which has the capability to extend term financing to foreign buyers. Each operates within a specific product category, and provides a full range of services on a worldwide basis. Although operating within a specific product area, these are broad—food, and machinery. Both firms agree with my contention that there is in operation today within the United States a viable "export trading company industry."

The title of H.R. 7230 is the Export Promotion and Export Trading Act of 1980. The objective of the bill is to aid export trading companies, and hence to increase U.S. exports. There are a variety of steps that could be taken to improve the performance of export trading companies. Some of these could be considered as incentives, but many of them could be more correctly labeled as the elimination of disincentives. To cite a few examples:

(1) We have maintained an office in the Middle East staffed by an American, the sole purpose of which is to promote the sale of U.S. products to Middle East customers. The personal income tax laws of the United States place an immense burden upon this employee, and in turn on our company.

(2) Foreign policy initiatives are often in complete contravention of export trade objectives. The Arab boycott regulations are a classic example. Individual country trade embargoes are another.

(3) There are no significant tax credits relating either to export sales, or to the creation of jobs involved in export sales. To be effective these must necessarily be simple to understand and use.

(4) Simplification of the morass of paperwork relating to individual export transactions, and to the periodic reports required of exporters, would be welcomed by all firms involved in export sales.

(5) Some mechanism should be provided whereby long term/low rate financing can be made available when necessary to counter similar credit facilities offered by foreign competitors.

The role of the export trading company is to work with the small to medium sized producer, those not large enough to operate their own international organizations. The large producers are self-sufficient as exporters, and do not require the assistance of middlemen. Firms such as Boeing, Caterpillar, and General Electric are able to integrate on their own all of the elements necessary to be successful in the export market.

To be successful the export trading company must first locate, and then develop a working relationship with, producers of exportable goods or services. This is difficult. Not so much that there are not many producers of such goods and services, but most producers are simply not interested in exporting. They find that the profit potential on domestic sales is as good as on export sales, and it is a whole lot easier. Even with a good export trading company acting as a buffer the producer still gets involved in such things as export packing and labeling, foreign language product information, product warranties, etc. Provided no incentive to export he quickly loses interest in the whole concept. The net result, as it relates to the export trading company, is that there is fierce competition to work on behalf of those few producers of exportable goods and services that have any interest whatsoever in exporting.

The principal reason that most U.S. producers are not involved in the export market is simply that there is no reason for them to be involved. The domestic market is large enough that most producers feel that sales growth objectives can be achieved by further penetration of the domestic market. Additionally, the domestic producer is motivated by one primary objective, profit! Unless he can see how profits on export sales will exceed profits on domestic sales, or yield the same rate of profit with less effort, he has no reason to export. Unfortunately, such a higher rate of return on export sales is not the case for most producers.

For the more sophisticated producers there may be valid reasons for exporting other than the realization of immediate profits. Such factors as economies associated with large manufacturing runs, dampening of business cycles and participation in markets in earlier stages or development are classical arguments for internationtal business operations. Unfortunately the small and medium sized business entrepreneur is seldom swayed by these considerations.

Over the last several years there has been a great deal of discussion in academic and congressional circles of "supply-side economics." As this concept gains acceptance, and tax laws are revised acordingly, emphasis should be placed on tailoring tax laws to promote exports. The present "DISC" regulations are of some benefit to exporters, but they are so complex that only the larger corporation can fully utilize the benefits. Any export stimulus to the small and medium sized producer must be simple to understand and utilise. Accelerated depreciation of assets employed in the production of exported goods is one example.

Returning to the export trading company, Senate bill 2718 is proposing that banks be allowed to establish subsidiary companies that would function as export trading companies. Although no similar language is yet specifically included in H.R. 7230 indications are that such a provision is under consideration. I feel that such a provision would be a mistake. It can be argued successfully that existing export trading companies are not as effective as their foreign counterparts, but simply allowing banks to establish their own export trading companies will not suddenly create a dramatic increase in U.S. exports. Quite to the contrary. It could easily create a situation wherein existing export trading companies, and even producers doing their own exporting, might find it difficult or impossible to function. I say this for two reasons.

The principal financial instrument in international transactions is the letter of credit. Large numbers of these instruments pass through the banking system each day, and each document distinctly specifies the full name of the buyer, the seller, and the terms of sale. This is privileged information of enormous value to a potential competitor. I can say quite emphatically that we would be very reluctant to process a letter of credit through a bank that also owned an export trading company with which we were competing.

A second consideration is the ability of banks to provide financing, totally unrelated to export activities, to a customer in order that their captive export trading company could secure the export business of that customer. It would be impossible for the independent export trading company to compete against such an arrangement.

Even Paul A. Volcker, Chairman of the Board of Governors of the Federal Reserve System has stated reservations regarding the wisdom of banks entering the export trading field. To quote from his letter of May 12, 1980, to Senator Proxmire:

"Those reservations stem not from lack of sympathy with the purpose of this legislation in making export related services available to more firms in the United States. Rather, we in the Federal Reserve have substantial questions about the degree to which banking organizations should be permitted to participate directly in, or even control, export trading companies. In that connection, we feel strongly that the tradition of separation of banking and commerce has served the country well."

In summary I would like to make the following points:

(1) There is in existence today an "export trading company industry" consisting of several thousand firms of various sizes, and varying product or geographic orientation.

(2) Legislation aimed at making these firms more effective should be a high priority of Congress. Such legislation should be directed at providing incentives to these firms, but more importantly at eliminating unnecessary burdens now placed upon them.

(3) Banks have played, and should continue to play a vital role in export trade. Permitting banks to become directly involved as export traders, however, is not a proper function of banking.

(4) Although assistance to export trading companies will be of unquestioned benefit in increasing U.S. exports, the principal thrust of Congress should be to provide workable incentives to the producers of exportable goods and services.

OBSTACLES TO EXPORTING

Mr. Bonker. Do you think the situation will be different if the opportunity exists for exporting and the producer doesn't have to gather together all the resources needed to export?

Mr. Ebling. We have great difficulty today convincing producers that they want to export. We will go to a producer and we will offer to them a range of services which completely camouflage the sale, if you will, turn it into something that looks like a domestic sale, and they still aren't interested in exporting.

They come back to you and say: I am going to have to do something in the way of foreign language packaging, foreign language labeling; I haven't penetrated the eastern part of the United States, I am not shipping to a southern part of the United States; where is my incentive to export?

The practical answer to the question is they really don't have a strong incentive to export.

Mr. Bonker. You mean the marketing system isn't working for them but it is for the Japanese and others who are doing so well in the export market?

Mr. Ebling. I think a lot of it gets back to what Carie Cable was saying and what other people have said earlier today about mind-set. The people in Japan at all levels think in terms of export opportunities, whereas in the United States most producers of both goods and services look only at the domestic market.

Mr. Bonker. I should really adjourn the subcommittee and go ove to vote. The staff suggested maybe I should miss it, but I have bee out in the Mount St. Helens area so much I have missed too man votes. I have staff here. They may want to talk with you informally Of course, we all know the staff are really the ones who make th decisions anyway; we just formalize them.

You do have some interesting points. I am terribly interested i the State of Washington and will be taking a view toward promotin and expanding trade. If this isn't a way of doing it, maybe you hav some other ideas.

I am sorry for the interruption, but that is beyond my control. have to adjourn the subcommittee at this time.

[Whereupon, at 4:40 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

EXPORT TRADING COMPANIES

TUESDAY, JUNE 10, 1980

House of Representatives,
Committee on Foreign Affairs,
Subcommittee on International
Economic Policy and Trade,
Washington, D.C.

The subcommittee met at 3:20 p.m. in room 2200, Rayburn House Office Building, Hon. Jonathan B. Bingham (chairman of the subcommittee) presiding.

Mr. Bingham. The Subcommittee on International Economic Policy and Trade will be in order.

I want to apologize to our witnesses for the long delay in opening the hearing, but I think they understand we have been considering a matter on the House floor which commanded our presence.

Today, the subcommittee concludes its hearings on proposals to expand and encourage export trading companies and export trade associations. It is my intention to proceed to markup next week, and I hope the full committee will be able to act on the bill before the recess. This is imperative if we are to enact legislation this year.

Mr. LaFalce, our colleague from New York, was to appear at this time, but he has asked that his statement be included in the record, which will be done, without objection.

[Mr. LaFalce's statement follows:]

STATEMENT OF HON. JOHN J. LAFALCE, A REPRESENTATIVE IN CONGRESS FROM T STATE OF NEW YORK

Mr. Chairman and other Members of the Subcommittee, it is both an honor and a pleasure to testify concerning export trading companies; and I want to take this opportunity to applaud you for moving so expeditiously on this issue.

During the past three years, the U.S. has managed the dubious distinction of amassing approximately $90 billion in trade deficits, which has contributed to the precari condition of the U.S. dollar. Those record trade deficits were the result of both sl export growth and the rapid growth of imports. Quite simply, there are two ways to re fy that distressing situation. First, we could take action to encourage and boost exports. Second, we could take action to restrict imports.

That second option is once again attracting attention and support in recent months. Certain sectors of the economy have been unable to compete with their counterparts in other countries and have resorted to loud demands for protection from foreign competition. However, those demands must be generally resisted. Tariff protectionism is often inflationary, because it protects expensive domestic goods from competition by cheaper and more efficiently produced foreign goods. Tariff protectionism also discourages innovation and productivity, because it removes a powerful economic incentive for technological breakthroughs.

From a historical perspective, tariff protectionism is a very dangerous policy to initiate. For example, during the late 1920's and the early 1930's, many countries established high tariff walls around their economies and engaged in general trade wars with each other. The U.S. was not immune to this temptation, and it established its ow extremely high tariff through the Smoot-Hawley Act. The end result of those actions was an intensified world-wild depression and, indirectly, the outbreak of the Second World War.

I did not make this digression into an attack on protectionism idly; I merely wanted to focus in on the importance of the first option and to emphasize the fact that it is our only real option in a rational sense.

There are some things the Congress cannot do to encourage exports. The Congress would experience considerable difficulty in legislatively mandating that every U.S.

business proprietor learn at least one foreign language, which is unfortunate, because American businessmen generally lack any linguistic skills. This puts American businessmen at a disadvantage in places, such as Sri Lanka, Brazil and Niger, where their foreign counterparts may speak the local language or multiple international languages, such as Spanish, French or German.

However, there are measures which Congress can employ which would provide significant incentives for U.S. exporters. One of the most important measures would be Congressional approval for the establishment of U.S. export trading companies, and, therefore, I have introduced H.R. 7310, the Exporting Trading Company Act of 1980. Other important export trading company bills have been introduced by Congressman Jonathan Bingham, Congressman Don Bonker, Congressman Les AuCoin, and Congressman Henry Reuss. I know that we all share a common goal of passing a bill which will result in the creation of U.S. export trading companies, and I believe that we can achieve that goal through cooperation and compromise.

NEED

Small businesses, medium-sized firms, and smaller agricultural cooperatives do not export U.S. goods and services which could be highly competitive abroad in terms of both price and quality; and part of that failure stems from the fact they have inadequate access to export trading services.

Smaller concerns do not export, because exporting involves unfamiliar economic risks and requires highly specialized knowledge about foreign markets and skills for complicated negotiations. Although greater efforts to encourage and assist U.S. producers to export can often be of assistance, the marginal costs of fully developing their export opportunities abroad will be prohibitive for many, if not most, producers. Meaningful export success will largely depend on intermediaries which could do the actual exporting for U.S. companies. Export trading companies can diversity trade risks and can easily develop economies of scale in marketing, transportation, financing and other export trade services.

A few U.S. trading companies and trade associations do exist, but they specialize in raw materials and agricultural commodities and do virtually nothing to expand exports of U.S. manufactured goods. Some export management companies do provide a full range of export trade services, but these companies generally tend to be small and shallowly capitalized firms specialized along product lines.

Foreign trading companies exist in Japan, the Republic of Korea and many Western European countries. These companies have made significant contributions to the growth in exports from all of those countries, although the Japanese experience has been by far the most notable. The best known Japanese trading company is Mitsubishi, but there are many other companies, which have helped make Japan one of the most export-oriented countries in the world.

It may seem surprising that the free market has not produced U.S. export trading companies to compete with foreign export trading companies, but a combination of factors have effectively hampered the operation of the free market in this area. Regulations prevent U.S. financial institutions from involvement in the provision of export trading services, which is a severe restriction on the financing ability of any U.S. export trading company. There is considerable confusion and uncertainty concerning the applicability of antitrust statutes to cooperation among export trading companies. Although some huge corporate conglomerates have developed considerable export expertise, that is of little value to other smaller firms which have no experience in this field.

Mr. Chairman, throughout U.S. history, American businesses have been spoiled, because the vast and growing nature of our domestic market has offered seemingly limitless opportunities for domestic businesses. However, as the world has become more and more interdependent, the need has grown for increased U.S. exports, in order to finance our imports and to provide employment opportunities for U.S. workers. Although this country is an ethnic potpourri, American businessmen know a great deal less than their foreign counterparts about foreign customs. Because of political or cultural factors, foreign markets can differ widely in nature; and American businessmen are often perplexed by those differences. Export trading companies can help fill all of those gaps.

GOVERNMENT PARTICIPATION

Export trading companies in other countries receive significant government assistance in a number of ways. For example, Japanese export trading companies are eligible for financial assistance from the Japanese equivalent of the U.S. Export-Import Bank.

There are two possible approaches to providing U.S. export trading companies with the ability to compete with their foreign counterparts.

First, sole utilization of the Export-Import Bank, which is the approach in H.R. 7310. Export trading companies would be eligible for Exim loans and loan guarantees to meet up to 50 percent of export-related operating expenses to a maximum of $1 million in one year or $2.5 million in total. In addition, these companies would be eligible to participate in all programs of the Export-Import Bank. Lastly, the Exim-bank could guarantee 80 percent of short-term "bridge loans" for export trading companies, which could be very helpful for small businesses, which encounter serious financial barriers, when selling abroad.

Second, Eximbank financing could be restricted to the guarantee of "bridge loans". The Department of Commerce and the Small Business Administration would thereby be authorized to provide start up and operating assistance to export trading companies.

Whichever method is chosen, I believe that government participation is mandatory from both a financial and a psychological viewpoint.

TAX TREATMENT

H.R. 7310 would extend the Domestic International Sales Corporation (DISC) treatment of all their income to export trading companies. That would include income from export service, which is not presently covered by DISC. This is important, because services can be a very significant component of exporting.

H.R. 7310 would also provide an exemption for export trading companies from some of the Subchapter S requirements of sections 1371 and 1372 of the Internal Revenue Code. This would allow these companies to use the provisions of the subchapter without limiting the foreign source income of these companies to less than 20 percent per year, as stipulated in present law. Export trading companies simply could not comply with that existing statutory restriction.

ANTITRUST LAW MODIFICATIONS

The Webb-Pomerene Act, which was signed into law in 1918, permits U.S. companies to form export trading associations to promote foreign sales, by extending immunity from antitrust laws to these associations. Although that Act had laudatory goals, the historical experience associated with Webb-Pomerene has been very unsatisfactory.

Two Federal Trade Commission studies have found that Webb-Pomerene has not contributed to increased exports in any meaningful manner. Export trading associations tend to be cumbersome in nature and very limited in scope. Furthermore, businessmen have long complained that there is a great deal of uncertainty about the antitrust provision in Webb-Pomerene, because it is somewhat vague and confusing.

A report issued on April 4th by the Congressional Research Service reached the same conclusions as the FTC concerning the extremely limited value of export trading association.

All of the bills before the Subcommittee share one common feature. They would all extend the antitrust provisions under the Webb Pomerene Act to the export activities of export trading companies. Activities means both goods and services. If export trading companies are to promote U.S. exports, particularly from small and medium-sized firms, they must be able to establish a close relationship with domestic manufacturers to exploit the traditional U.S. strength in producing new and innovative products. Without this exemption, that relationship will be lacking.

Ironically, permitting this exemption from antitrust laws will in the long-run encourage competitiveness within the U.S. economy, because export trading companies will be most helpful to small and medium-sized firms which lack export-oriented skills and experience. Multinational conglomerates have no need for export trading companies because of their very nature.

BANKING PROVISIONS

Mr. Chairman, I believe that the most important part of a bill to facilitate the creation of U.S. export trading companies will be a provision to allow for participation in these companies by financial institutions. Without that participation, an export trading company bill would be little more than a Sense of Congress Resolution.

At the present time, there are three basic legislative prohibitions against investments in export trading companies by financial institutions. First, the Edge Act prohibits an Edge Act Corporation from investing in any corporation "engaged in the general business of buying or selling goods, wares, merchandise or commodities in the United States." Second, the Glass-Steagall Act generally prohibits a national or state bank from acquiring for its own account "any shares of stock of any corporation". Third, the Bank Holding Company Act generally prohibits a bank holding company from engaging in nonbanking activities or from owning or controlling shares of any company that is not a bank.

H.R. 7310 and similar bills would override those specific prohibitions, but only in the case of export trading companies. I want to emphasize that this would otherwise leave intact the general prohibitions.

H.R. 7310 and companion bills contain strict provisions to ensure that bank involvement in export trading companies does not lead to conflicts of interest, unsound banking practices, or unfair methods of competition. As the co-author of the Financial Institutions Regulatory Act of 1978, I was very concerned about the need to avoid this type of situation concerning the connection between financial institutions and export trading companies.

As a further safeguard, the Comptroller of the Currency, the Federal Reserve Board and the Federal Deposit Insurance Corporation are authorized to strictly regulate financial institutions which participate in export trading companies. H.R. 7310 would allow banks, bank holding companies and Edge Corporations to invest up to five percent of their capital in no more than 50 percent of the voting stock of an export trading company without the prior approval of the appropriate federal banking agency. Investments above either figure would be subject to the prior approval of the appropriate regulatory agency, and financial institutions would be prohibited from investing more than ten percent of their total capital in one or more export trading companies.

I believe that these restrictions will effectively protect the fiduciary integrity of banks, bank holding companies and Edge Corporations, while allowing them to provide suitable assistance to export trading companies. This would not only help increase U.S. export, but it would also allow U.S. financial institutions to compete on a more equal basis with their foreign counterparts. At the present time, foreign banks do control trading companies, as , for example, in the case of the Hongkong & Shanghai Banking Corporation which has a controlling interest in the Hutchinson Whampoa Ltd.

I well realize that these provisions constitute a conscious change of historical policy of separating banking from commerce; but I also realize that the lagging rate of U.S. exports demands such a departure under carefully controlled conditions.

ACTION ELSEWHERE

On May 15th, the Senate Banking Committee reported out S. 2718, which is a modified version of a number of bills before the Subcommittee. It is my understanding that the Senate Finance Committee is expected to act soon and send S. 2718 to the Floor of the Senate.

The Administration has indicated in a very strong fashion that it supports legislation to facilitate the establishment of U.S. export trading companies. I know that Ambassador Hormats and Under-Secretary Herzstein will testify after me, and I welcome their support for this important legislation.

CONCLUSION

Mr. Chairman, experts have estimated that at least 15,000 to 20,000 small and medium-sized businesses could participate in exporting, but they do not do so for lack of technical and financial assistance. Export trading companies would help correct that truly lamentable situation, by providing both types of assistance within the private sector.

This country must have a comprehensive and meaningful export policy, and export trading companies must be a central component of that policy, because they would help restore this country's competitiveness with other Western countries, which already have dynamic and effective export trading companies.

Mr. **Bingham.** We will proceed now to hear the testimony of the administration's witnesses. We are privileged to have with us today Ambassador Robert Hormats, Deputy U.S. Trade Representative, and Hon. Robert Herzstein, Under Secretary of Commerce for International Trade.

We welcome you, gentlemen, once again to the subcommittee, and you may proceed in any manner that you wish.

STATEMENT OF HON. ROBERT E. HERZSTEIN, UNDER SECRETARY FOR INTERNATIONAL TRADE, DEPARTMENT OF COMMERCE

Mr. **Herzstein.** Thank you very much, Mr. Chairman.

Mr. Chairman, we have a prepared statement, and I will summarize the first part of it because I know you are short on time. Then I will go somewhat more carefully through the last part which describes the administration position on these bills.

We are very pleased to appear before you today, and we certainly appreciate the prompt attention that the subcommittee is giving to this legislation. The administration hopes very much that it will be reported out and acted on in this session of Congress.

OBSTACLES TO EXPORTING

We applaud the aims of all of these bills which would encourage the formation of export trading companies. We see this as a very useful step in assisting U.S. businesssmen to overcome a number of structural obstacles to trading abroad which have caused a persistent lack of competitiveness in world markets, and are in part, in any event, responsible for the persistent balance of trade deficits suffered by the United States in recent years.

The basic problem, as I indicated, is a structural one. It comes down to the fact that both U.S. businessmen and foreign businessmen prefer to sell their products in the United States rather than in foreign markets. The United States consists of one large, affluent market of 200 million people, speaking more or less one language, with a very efficient distribution system in which any company that wants to enjoy access to this market has the assistance of experts in the form of lawyers, accountants, consultants, and others who can integrate the manufacturer into our market rapidly and efficiently. Our market is also characterized by easy access to technology, manufacturing facilities and, indeed, ready possibilities for acquiring entire companies. Many of these same conditions simply do not prevail in foreign markets.

A manufacturer, whether he is abroad or in the United States, who wants to sell outside the United States, has to contend with a variety of small specialized markets, speaking different languages, with complex and sometimes closed distribution systems, and has to face a variety of structural barriers depending on the country in which he is doing business.

The net result of this is a sort of magnetism that makes it easier, as I indicated, to sell in the United States, and results in a greater flow of trade inward rather than outward. A typical U.S. manufacturer is so busy exploiting this large domestic market in which he is comfortable and used to operating that it is very hard to induce him to face the risks and added burdens of selling his products abroad.

ROLE OF EXPORT TRADING COMPANIES

Many of the American companies who are very efficient producers and marketers of their products simply don't have the knowhow or the management time or the financial resources to cope with entering foreign markets, and sometimes they simply are not willing to take the added risk that is involved in such an effort. We see export trading companies as one very useful implement in overcoming these problems and these obstacles.

There are some 250,000 manufacturing companies in the United States, and our information at the Commerce Department is that not more than 10 percent of these participate in export markets at all, and something less than 1 percent of these account for 80 percent of all of our exports.

There is obviously a tremendous potential for the United States to do better in competition abroad, if we can simply make it easier for the smaller and middle-size American businessman who does not have his own sophisticated foreign marketing operation, to get his product into channels that will result in selling them in foreign markets.

Export trading companies, such as those that would be encouraged by these bills, would take the products from a U.S. manufacturer in a sort of a one-stop process. The manufacturer could sell or distribute his products through an export trading company with much the same ease, and financial risk and burden, as if he were selling in domestic markets. The export trading company would take the product off his hands, take care of all the legal, financial, and shipping complexities, and sell his product abroad.

The export trading company—ETC—would have another dramatic skill. It would be established in foreign markets as a traditional operator. Once it gets going, it will reach its tentacles into these markets, and it will learn the individual characteristics of marketing in France, or Japan, or Germany, or Portugal, or wherever it may be. Therefore, an ETC will have a ready skill and familiarity which will enable it to distribute the products more effectively than the American manufacturer would, even if one could induce him to put up with the time and financial exposure involved in attempting to do so.

Finally, we see the export trading company as functioning, much as the Japanese trading companies do at the present time, to find markets and then come back to the United States and get products made to fit those markets. So many American manufacturers simply make their products and if there is a foreign market for them, they will sell there. If there is not, that is the end of the story.

We think that it is important for entrepreneurial American companies to be searching for markets in foreign countries, and then come back to the United States and find manufacturers who will make or adapt their products to fit the peculiarities of those foreign markets. We think the export trading company is likely to stimulate this kind of market pull on American manufacturers, and perform a very useful function in expanding their markets abroad.

NEED FOR LEGISLATION

Now, one might ask, why is legislation needed? The fact is, under American law, anyone can form a company to engage in the export trading business. Indeed, there are a number of companies known as export management companies that attempt to perform this kind of a service.

Our information is, however, that there are some inhibitory effects on these management companies as they are presently organized which have kept them from functioning as efficiently, and from getting as large as is necessary to perform these export trading company services effectively.

The inhibitory effects result from our banking legislation, and from the antitrust laws. The bills we are talking about today would make some narrow and fairly carefully guarded exceptions in those regulatory programs in order to permit American businessmen to have the small degree of flexibility needed to allow them to experiment with this new marketing vehicle which we think has a great deal of promise.

I would like to underscore that we are not engaging in any kind of broad or serious incursion into those regulatory programs. The exemptions are expressed in the bills, particularly the bill reported by the Senate Banking Committee, S. 2718, and its companion bill introduced by Representative Reuss, H.R. 7436.

The regulatory amendments in those bills, we feel, are entirely consistent with the purposes of the antitrust laws and the banking regulatory laws, and would insert enough flexibility to allow these export trading companies to get off to a start.

The Senate Banking Committee bill represents many months of consultation between the administration and those Senators who sponsored export trading company and Webb-Pomerene legislation. It reflects an appropriate accommodation of the export trade interests to be promoted by the legislation with important banking and antitrust interests that must be preserved. The administration is now able to endorse the banking provisions of S. 2718. We also approve the approach taken in the antitrust provisions of that bill, although we do have some minor disagreements, and we are still in the process of clarifying some of the specific language. I urge the members of this subcommittee to adopt the approach to both regulatory areas contained in S. 2718. I do not suggest that this bill is the final word on the antitrust and banking issues, or on export trading legislation generally. It is a sound first step and one that should give us the experience to decide what, if any, future steps are necessary.

Let me now address briefly the major provisions of the bills we are talking about.

BANK EQUITY PARTICIPATION

Because of their expertise and financial resources, banks can play an important role in the successful development of export trading companies. The administration believes that S. 2718 adequately meets the concerns of safety and soundness for our financial system while permitting a leading role for bank participation in export trading companies.

The bill permits a banking organization to make aggregate investment up to 5 percent of its capital and surplus in export trading companies without obtaining the prior approval of the appropriate Federal banking agency. Regulatory approval would be required for aggregate investments of more than $10 million, investments that cause the export trading company to become a subsidiary of the investing bank organization, or investments that would cause more than half the voting stock of any export company to be owned or controlled by banking organizations. Aggregate bank investment and credit extensions to export trading companies would be limited to 10 percent of a banking organization's capital and surplus. The provisions address specific regulatory concerns over parent bank exposure to trading company operations, potential commodity speculation, and the need to avoid preferential credit relations.

Export trading companies with noncontrolling bank investments could take title to goods and hold inventory, with the exception of positions taken in commodities other than as may be necessary in the course of normal trading relations.

ANTITRUST PROVISIONS

Title II of S. 2718 contains a certification procedure by which export trading companies and traditional export associations can obtain assurance that their activities will not expose them to antitrust liability. The need of businessmen is for certainty that the antitrust immunity for export trade activities will protect them, rather than for changes in the Sherman Act itself. Title II has been carefully crafted to provide checks on anticompetitive developments within the United States.

Title II establishes a procedure for an export trading company or export association to present to the Department of Commerce a reasonably detailed statement of export trade activities it plans. The Commerce Department, after consultation with the antitrust authorities, would certify these activities as immune from the antitrust laws only if they would promote export trade and would not result in a substantial lessening of competition within the United States.

Once certification has been granted the certified export trade activities of the company or association would be exempt from antitrust liability so long as it remained within the confines of its certificate. The Commerce Department could revoke the certificate if the entity's activities ceased to conform to the statutory standards, and the antitrust authorities would be empowered to seek decertification in court on their own initiative. So the basic antitrust safeguards with respect to competition in the domestic U.S. market would be effectively preserved.

Title II would also make the export of services eligible for Webb-Pomerene exemption and would provide for the automatic certification of existing Webb-Pomerene associations.

FINANCE PROVISIONS

H.R. 7310 and H.R. 7364 would provide a $100-million facility in the Export-Import Bank to extend loans and guarantees to export trading companies for startup costs and operating expenses. The Administration opposed a similar proposal before the Senate Banking Committee because it would involve Eximbank in domestic credit operations where it has no expertise. Instead, the administration approves using existing authorities such as those provided the Economic

Development Administration and Small Business Administration to help export trading companies meet startup costs.

We do not object to authorizing Eximbank to guarantee commercial loans against inventory or export accounts receivable. However, as provided for in section 107 of S. 2718, this authority should be conditioned on a finding in each case by the Bank's Board of Directors that the private credit market is not providing adequate financing and that the guarantees would facilitate exports which would not otherwise occur.

TAX PROVISIONS

The administration remains firmly opposed to the modifications of the DISC and the subchapter S provisions of the Internal Revenue Code proposed in H.R. 7310, H.R. 7364, H.R. 7436, and H.R. 7463. Most export trading companies should be able to meet the requirements of the present DISC legislation. Thus, the creation of export trading companies will effectively expand DISC coverage without changing the statute itself. However, extending DISC benefits to "services produced in the United States" and to "export trade services" as described in the bill, would be costly.

The revenue cost of the bill cannot be precisely estimated, in part because the proposed language is quite open-ended. We are convinced, though, that the additional cost could run into the hundreds of millions of dollars. Present budgetary restrictions simply do not permit a revenue loss of that proportion at this time.

Even if Federal budgetary conditions were less stringent, however, we would have serious doubts about the scope of the proposed amendments. Many of our large service firms have substantial international practices. These firms could incorporate ETC's simply to qualify existing operations for DISC benefits. The result would be a substantial revenue loss without any demonstration that the bill was having the desired effect of increasing exports.

Finally, of course, we note that under the recently negotiated International Subsidies Code, the United States was able to secure at least a temporary "grandfathering" of the present DISC program. Substantially enlarging the legal scope of the DISC program could raise questions in the mind of some of our trading partners about U.S. observance of the international codes.

With respect to the subchapter S provisions, we support eliminating the present requirement that a qualifying corporation earn at least 20 percent of its income within the United States. We believe, however, that this and other reforms of subchapter S should be part of a broader reform of subchapter S. We call the committee's attention to the report on subchapter S reform recently issued by the Joint Committee on Taxation. We urge the tax writing committees to take up consideration of subchapter S reforms as soon as feasible.

In conclusion, Mr. Chairman, with the minor changes to which I alluded earlier, the administration urges the adoption of the banking and antitrust provisions of S. 2718. We also urge the deletion of the revenue provisions in all these bills. Removal of this last difference will allow the administration and congressional supporters to work together toward passage of export trading company legislation in 1980.

[Mr. Herzstein's prepared statement follows:]

PREPARED STATEMENT OF HON. ROBERT E. HERZSTEIN, UNDER SECRETARY FOR INTERNATIONAL TRADE, DEPARTMENT OF COMMERCE

I am pleased to appear today before the International Economic Policy and Trade Subcommittee to present the Administration's views on legislation to authorize the formation and operation of export trading companies. H.R. 5061, H.R. 7230, H.R. 7310, H.R. 7364, H.R 7436 and H.R. 7463 have the common objective of encouraging exports of products and services by American industries. Five of the six bills would encourage the formation of export trading companies.

The Administration applauds the aim of these bills. We agree that an increase in exports is of utmost importance to the nation's economic well-being. The Administration endorses the concept of export trading companies and a change in the Webb-Pomerene Export Trade Act that would clarify the application of the antitrust laws to export trade activities.

Before discussing the specifics of export trading company legislation, I would like to review briefly the importance of exports to the United States economy and explain how export trading companies can help us to improve our export position in world markets.

The Importance of Exports to a Strong U.S. Economy

In 1960 the United States had an 18% share of world exports of manufacturers. By 1970 this share had dropped to 14.5%. During the 1970's this share dropped further before edging upwards again towards the end of the decade. In recent years we have seen some of the effects of the decreased competitiveness of U.S. exports.

In 1980 the United States will pay over $80 billion for imported oil. In the next five years our payments for imported oil will equal about half the value of all the companies listed on the New York Stock Exchange. The cost of oil imports is perhaps the principal factor lying behind the large balance of trade deficits we have had in recent years. The result, of course, is a weakened dollar against some key foreign currencies.

Enormous as our oil bill is, we could be paying for imported oil without running a balance of trade deficit if we had maintained the share of world exports in manufactured goods that we enjoyed in

1960. The post-war growth of Japan and our European allies, wel as it has been, has given the United States stiff competition. too, the newly industrializing countries have become important exporters of some manufactured goods. Yet the strengths of oth countries do not tell the whole story. Another factor is the traditional disinterest of most American companies in exporting

Only 10% of the 250,000 manufacturing firms in the United St export. Fewer than 1% of these firms account for 80% of our exports. The reasons for the disinterest of many U.S. firms in exporting are quite simple. The United States is the most attractive market in the world. Both U.S. and foreign business will tell you that they prefer to sell in the United States. W present to the world a large, affluent market in which a seller reach 200 million people, most of whom speak one language. We an open market with a highly efficient distribution system, wit fine professional and management assistance available to any participant, and with relatively easy access to technology, manufacturing facilities, or the acquisition of entire companie

Other countries do not have all these advantages. Most are smaller markets. Many have complex and unique distribution syst or restricted access to the country itself. Languages differ wi countries, as well as across continents. Technology and established companies are more difficult to buy in foreign countries than they are here.

The result of these differences between U.S. and foreign markets is a kind of magnetism towards the United States. The difficulties in selling abroad discourage all but our largest enterprises from undertaking to do so.

The Role of Export Trading Companies

Faced with a large domestic market, most small and medium-sized companies have little incentive to export. What incentive they may have is further diminished by their lack of know-how management time, and financial resources. Exporting may seem too much of a management burden, too costly, and too risky for the uncertain return it promises.

The solution for the non-exporting American company is a partner that will take a quality product manufactured by that company and itself do the exporting. This is precisely the approach adopted by many of our most successful trading partners, including West Germany, Japan, France, and Hong Kong. All use some form of a sophisticated export trading entity to represent manufacturers abroad. They may also promote consortia of companies to undertake large overseas projects, with their attendant large risks.

Aside from the major international grain companies, we do not have large export trading entities. To be sure, there are some 700-800 export management companies in the United States, many of them well-managed and successful businesses. Most are quite small, however, and cannot provide the full range of export services required by the novice exporter.

We have identified three characteristics that are essential for a successful U.S. export trading company. First, it must provide a "one stop" facility for firms of any size interested in exporting. It must provide market analysis, distribution services, documentation, transportation arrangements, financing, and after-sale services abroad. In performing these services, the export trading company will develop a thorough knowledge of the laws and customs of the foreign markets in which it sells. As exporting specialists, of course, these companies will achieve economies of scale beyond those an individual company could hope to achieve.

Second, a successful export trading company will seek out U.S. products for which it has discovered markets overseas. It will not stand by passively, awaiting overtures from U.S. companies interested in exporting their products.

Third, the export trading company should limit the capital outlay and risk that any individual company would have to assume to begin exporting. The exporting company must be sufficiently capitalized to allow operations on a scale that will achieve the economies mentioned earlier.

Export trading companies with these characteristics are most likely to be formed by entities that already operate in international markets and that have sufficient capital available. A manufacturer that exports its own products may use its overseas network to sell products of smaller U.S. companies that will not export on their own. Similarly, many banks have national and foreign coverage by branches, agents, or correspondent banks. These banks are already in the business of evaluating risks, understanding foreign markets, and providing financing. Banks also have existing relationships with many domestic manufacturing companies. They are logical candidates to form and participate in export trading companies. No matter what the origins or ownership of the export trading company, its aim will remain the same--to export products of U.S. companies that do not now export in significant quantities.

The Need for Legislation

One might ask why, if export trading companies could be so successful, the private sector has not already seized upon the opportunity and formed them in significant numbers. One important answer lies in the inhibiting effect of some of our regulatory mechanisms. Banking laws and regulations do not allow bank investments in export trading companies. There is also uncertainty in some segments of the business community over application of the antitrust laws to export efforts involving products of domestic competitors.

As you know, the Senate Banking Committee has been considering legislation in this area since last fall. The bill reported by the Senate Banking Committee, S. 2718, represents a careful attempt to provide flexibility in the regulatory schemes to allow successful export trading companies while not undermining the banking and antitrust laws. Representative Reuss has introduced H.R. 7436 as the House version of S. 2718.

The Senate Banking Committee bill represents many months of consultations between the Administration and those Senators who sponsored export trading company and Webb-Pomerene legislation. It reflects an appropriate accommodation of the export trade interests to be promoted by the legislation with important banking and antitrust interests that must be preserved. The Administration is now able to endorse the banking provisions of S. 2718. We also approve the approach taken in the antitrust provisions of S. 2718, although we do have some minor disagreements and we are still in the process of clarifying some of its specific language. I urge the members of this Subcommittee to adopt the approach to both regulatory areas contained in S. 2718. I do not suggest that this bill is the final word on the antitrust and banking issues, or on export trading company legislation generally. It is a sound first step, though, and one that should give us the experience to decide what, if any, future steps are necessary.

Let me now address the major provisions of the export trading company legislation.

1. Bank equity participation

Because of their expertise and financial resources, banks can play an important role in the successful development of export trading companies. The Administration believes that S. 2718 adequately meets the concerns of safety and soundness for our financial system while permitting a leading role for bank participation in export trading companies.

The bill permits a banking organization to make aggregate investments up to 5 percent of its capital and surplus in export trading companies without obtaining the prior approval of the appropriate Federal banking agency. Regulatory approval would be required for aggregate investments of more than $10 million, investments that cause the export trading company to become a subsidiary of the investing bank organization, or investments that would cause more than half the voting stock of any export company to be owned or controlled by banking organizations. Aggregate bank investment and credit extensions to export trading companies would be limited to 10 percent of a banking organization's capital and surplus. The provisions address specific regulatory concerns over parent bank exposure to trading company operations, potential commodity speculation and the need to avoid preferential credit relations.

Export trading companies with non-controlling bank investments could take title to goods and hold inventory, with the exception of positions taken in commodities other than as may be necessary in the course of normal trading relations.

2. Antitrust

Title II of S. 2718 contains a certification procedure by which export trading companies (and traditional export associations) can obtain assurance that their activities will not expose them to antitrust liability. The need of businessmen is for certainty that the antitrust immunity for export trade activities will protect them, rather than for changes in the Sherman Act itself. Title II has been carefully crafted to provide checks on anti-competitive developments within the United States.

Title II establishes a procedure for an export trading company or export association to present to the Department of Commerce a reasonably detailed statement of the export trade activities it plans. The Commerce Department, after consultation with the Attorney General and the Federal Trade Commission, would certify these activities as immune from the antitrust laws only if they would promote export trade and would not result in a substantial lessening of competition within the United States.

Once certification was granted the certified entity would be exempted from antitrust liability for the activities described in the certification. The immunity would only extend to activities covered in the certification. The Department of Commerce could revoke the certification if the entity's activities ceased to conform to the statutory standards. The Attorney General and the Federal Trade Commission would be empowered to seek decertification in court on their own initiative.

Title II would also make the export of services eligible for a Webb-Pomerene exemption and would provide for the automatic certification of existing Webb-Pomerene associations.

3. Finance provisions

H.R. 7310 and H.R. 7364 would provide a $100 million facility in the Export-Import Bank to extend loans and guarantees to export trading companies for start-up costs and operating expenses. The Administration opposed a similar proposal before the Senate Banking Committee, because it would involve Ex-Im in domestic credit operations, where it has no expertise. Instead, the Administration approves using existing authorities such as those provided the Economic Development Administration and Small Business Administration to help export trading companies meet start-up costs.

The Administration does not object to authorizing the Export-Import Bank to guarantee commercial loans against inventory or export accounts receivable. However, as provided for in Section 107 of S. 2718, this authority should be conditioned on a finding in each case by the Bank's Board of Directors that the private credit market is not providing adequate financing and that the guarantees would facilitate exports which would not otherwise occur.

4. Tax provisions

The Administration remains firmly opposed to the modifications of the DISC and the Subchapter S provisions of the Internal Revenue Code proposed in H.R. 7310, H.R. 7364 , H.R. 7436 H.R. 7463. Most export trading companies should be able to meet the requirements of present DISC legislation. Thus, the creation of export trading companies will effectively expand DISC coverage without changing the statute itself. However, extending DISC benefits to "services produced in the United States" and to "export trade services" would be costly. The revenue cost of the bill cannot be precisely estimated, in part because the proposed language is quite open-ended. We are convinced, though, that the additional cost could run into the hundreds of millions of dollars. Present budgetary restrictions simply do not permit a revenue loss of that proportion at this time.

Even if Federal budgetary conditions were less stringent, we would have serious doubts about the scope of the proposed amendments. Many of our large service firms have substantial international practices. These firms could incorporate ETC's simply to qualify existing operations for DISC benefits. The result would be a substantial revenue loss without any demonstration that exports would be appreciably increased.

Finally, we note that under the recently negotiated international Subsidies Code, the United States was able to secure at least a temporary "grandfathering" of the present DISC program. Substantially enlarging the legal scope of the DISC program would raise questions about U.S. observance of our international obligations.

With respect to the Subchapter S provisions, we support eliminating the present requirement that a qualifying corporation earn at least 20 percent of its income within the United States. We believe, however, that this and other reforms of Subchapter S should be part of a broader reform of Subchapter S. We call the Committee's attention to the report on Subchapter S reform recently issued by the Joint Committee on Taxation. We urge the tax-writing Committees to take up consideration of Subchapter S reforms as soon as is feasible.

In conclusion, Mr. Chairman, with the minor changes to which I alluded earlier, the Administration urges the adoption of the banking and antitrust provisions of S. 2718. We also urge the deletion of the revenue provisions in all these bills. Removal of this last difference will allow the Administration and Congressional supporters to work together toward passage of export trading company legislation in 1980.

Mr. **Bingham.** Thank you very much, Mr. Secretary.

Mr. Ambassador.

STATEMENT OF HON. ROBERT D. HORMATS, DEPUTY U.S. TRADE REPRESENTATIVE

Ambassador **Hormats.** Thank you, Mr. Chairman.

Under Secretary Herzstein has gone through most of the details of this legislation. Let me give you some general observations on how I believe the legislation fits into the development and conduct of U.S. trade policy in general.

As you know, last year Congress approved the results of 5 years of negotiations at Geneva in the form of the legislation which implemented the final round of the MTN. This created a host of new export opportunities for American firms. One of the difficulties, however, has been that American firms, particularly the small and medium-size firms, have not traditionally been geared to take advantage of export opportunities. There are a number of reasons—in part, because of the very large American market, and in part because exporting, particularly for small firms, entails major risks and uncertainties.

This is where the pending legislation comes in. It represents an opportunity to bring—for the first time in many cases—small firms and medium-size firms into the exporting game. In that respect, it opens up whole new possibilities for exports from the United States.

BANK PARTICIPATION

There are two elements which are particularly noteworthy. One is the role that banks will for the first time be able to play. This is important, I think, for three major reasons.

One is because banks have a great deal of experience in the international sector. Many of them have branches in Europe and are used to dealing with international financial issues. As a result, they have contacts abroad which will be particularly useful.

Two, because they have substantial amounts of resources at their hands.

Three, because they have domestically a network of business with which they have certain relationships which are particularly important. Some of the State banks, for instance, have offices in smaller towns, and they can reach out and bring in some medium-size and small companies into the exporting arena.

ANTITRUST PROVISIONS

The second noteworthy element is that services will benefit from the changes in the Webb-Pomerene Act which are brought about by this legislation. Services are particularly important these days because they account for an increasingly large percentage of American exports. In many cases, large American firms are competing for service contracts in the Middle East and other parts of the world where services are an important component in imports. The fact that this legislation will amend Webb-Pomerene, improve Webb-Pomerene, will make it easier for a large number of American firms to get together to bid on rather lucrative contracts, particularly in the Middle East but in other parts of the world as well.

It is also important to recognize that we have in developing this legislation attempted to balance off a number of considerations. The allusion is sometimes made to Japanese trading companies. We are not thinking of anything quite as ambitious as that.

We have taken great pains in the development of our response to this legislation to work with the banking specialists within the executive branch, and those specialists who are particularly concerned with antitrust legislation, to insure that there is an appropriate balance between our desire to increase exports and our desire also to insure prudent banking practices and faithful implementation of major antitrust statutes.

So we are dealing here with a balance of interests. We believe that the legislation developed by Senators Stevenson and Danforth is balanced and by and large does tend to take into account the concerns that I have mentioned—although we do have problems with some specific aspects, such as the tax provisions.

Last, let me point out that a number of other countries are beginning to think more seriously about export trading companies. A particular example is Canada, which has experienced some of the same problems as the United States. While not quite as dependent on their internal market, a large number of Canadian firms are beginning to think in the direction of increasing the possibilities of export through creating export trading companies.

To conclude, let me just say that I believe this legislation represents an important part of the followup to the successful multilateral trade negotiations. It is important because it brings small and medium-size firms into the exporting picture, many of them for the first time. And this legislation is important because it promotes service exports, and it also enables banks to play an important role without violating prudent banking practices.

So, as Under Secretary Herzstein has said, as we have said on a number of occasions, we are strongly in support of this approach. There may be some problems which we believe can be worked out.

Our hope is that this legislation will move quickly through this Congress, and we stand ready to cooperate with this subcommittee in furthering that process.

Thank you, Mr. Chairman.

[Ambassador Hormats' prepared statement follows:]

PREPARED STATEMENT OF HON. ROBERT D. HORMATS, DEPUTY U.S. TRADE REPRESENTATIVE

Mr. Chairman:

The Administration strongly supports the enactment of export trading company legislation. The United States Trade Representative, Reubin O'D. Askew, and Secretary Klutznick, the Secretary of Commerce, view such legislation as consistent with our national commitment to strengthen U.S. export performance. Indeed, by facilitating the creation of export trading companies and modernizing the Webb-Pomerene Act, it will strengthen the ability of American firms, particularly small and medium-sized firms, to compete more effectively in world markets.

The Trade Agreements of the recently concluded Tokyo Round of Multilateral Trade Negotiations offer important new opportunities to expand American exports, as well as improved assurances that international trade will be conducted on a fairer and more equitable basis. The question is, however, whether U.S. companies are adequately prepared to compete in the more open international trade arena. It is the feeling of the Administration that American business, especially firms which may not have been able to take full advantage of export opportunities in the past, will be better able to respond to this greater openness in the trade arena if trading company legislation is in place.

Of course, no piece of legislation can ensure strong U.S. competitiveness. Domestic economic policies, the economic policies of our trading partners, the productivity of domestic labor and business, and the cost of inputs into the economic process are, in many cases, determining factors. And the Administration and the Congress have a responsibility to do what they can to help reduce disincentives which unnecessarily discourage exports.

Export trading companies can make an important contribution in helping U.S. firms take advantage of the opportunities of world markets. They would open new possibilities for a wide variety of American firms which should be competitive in foreign markets but lack the requisite international market know-how or cannot afford the expenses of getting started.

S. 2718, the Export Trading Company Act of 1980 reported out by the Senate Banking Committee, has been carefully drafted to meet the emerging international challenge to American business. Its provisions revising the Webb-Pomerene Act and providing for bank participation in export trading companies have been extensively reviewed by the Administration's Trade Policy Committee structure. Our common objective has been to come up with a workable bill that not only meets our need to expand exports but also preserves sound banking policy and the efficient enforcement of our antitrust laws.

For example, with regard to the banking provisions, concerns have been expressed that bank failures could result from the speculative activities of bank-owned export trading companies. Concerns have also been expressed that banks might discriminate in favor of their trading company subsidiaries vis-a-vis other borrowers in the allocation of credit. Specific provisions of this bill which have been worked out, such as the requirement of regulatory agency approval of bank-controlled trading companies, ensure that these concerns are unlikely to materialize. Furthermore, because antitrust enforcement agencies would be involved in the certification process, and once an export trading company was certified could sue to obtain decertification, any possible anticompetitive efforts of trading companies should be minimized. And it is unlikely that such litigation would prove necessary because the Secretary of Commerce has the authority to decertify export trading companies.

Let me underscore very briefly now the need for such legislation.

For many U.S. firms, foreign markets can be a forbidding terrain -- involving unfamiliar risks, special skills and experience, and commitment of considerable time. The resources called for are often beyond those possessed by many small and medium-sized companies. The enormous effort needed to develop a foreign market is frequently possible for companies which produce in large volume, but can be prohibitively expensive for companies with smaller volumes of output.

Trading companies could provide expertise to small and medium-sized firms which are not equipped to compete on their own in foreign markets. These companies could pool talent and resources to do market analyses on behalf of thousands of U.S. manufacturers. Trading companies have been responsible for much of the success of Japan and Korea in selling their products around the world.

Currently, the United States has trading companies only in certain sectors, such as commodities. There are also small export management companies in the United States. However, the difficulty in securing adequate financing to expand such low-profit enterprises prevents export management companies from reaching more than a small fraction of the American companies which could export. Bank ownership of export trading companies would make available new financial resources as well as new networks of contacts with potential U.S. exporters and foreign importers.

In short, export trading company legislation would help establish a major role for trading companies in the U.S. Over a period of years with such legislation in place, I would envision the following developments:

--Trading companies could be formed which would be one-stop service firms meeting all the export-servicing needs of companies, particularly small and medium-sized firms, that want to export. Currently, firms avail themselves of the services of a number of different entities, such as freight forwarders, banks, consultants and others. However, under this legislation, one-stop trading companies could perform all export services including market research, shipping, financing, preparing shipping documentation, and even handling after-sales servicing.

--Trading companies could be formed which would buy and sell on their own account. These would be particularly effective in those industries, such as footwear, textiles, toys, sporting goods, and consumer electronics, where there are many small firms, each of which has a limited number of competitive products. It does not pay for these firms to incur the extra costs and risks of exporting. However, trading companies could accept these costs and risks for marketing throughout the world the products of the many small firms within a given industry. And the firms selling to these trading companies would find it no different than selling anywhere else in the domestic market.

--Manufacturing and service firms would be able more easily to team up to bid on one-time projects overseas. This is a practice pursued effectively by our trade competitors. Under this legislation, for example, an architectural firm, a bank, and a steel fabricator, or any other manufacturer, could team up to bid on a foreign tender with assurance that they would not be in violation of our antitrust laws. This assurance will be particularly important in the future, because government procurement markets will be opened up as a result of the procurement code agreed to in the recently concluded Tokyo Round of Multilateral Trade Negotiations.

Mr. Chairman, the need for a strengthened U.S. export posture is compelling. Export trading company legislation represents an important step forward.

We at the Office of the United States Trade Representative look forward to working with you and your colleagues to help export trading company legislative proposals become a reality.

Mr. **Bingham**. Thank you very much, Ambassador Hormats.

I would like to interrupt this hearing at this point, since Chairman Wolff of the Subcommittee on Asian and Pacific Affairs has joined us, to consider the bill on extending OPIC services to investors in the People's Republic of China.

[Whereupon, the Subcommittees on Asian and Pacific Affairs and on International Economic Policy and Trade proceeded in consideration of H.R. 5252.]

Mr. **Bingham**. The Subcommittee on International Economic Policy and Trade will resume.

U.S. TRADE DEFICIT

One major question: You point out that it is easier to sell in the United States than it is in foreign markets. That strikes me as a little strange, in view of the fact that until quite recently we had a favorable balance of trade. We exported more than we imported. In light of that fact, is your proposition still valid?

Mr. **Herzstein**. The reason we had a persistent trade surplus during approximately 20 years after World War II was a result of our industrial superiority during all that time. We were really the only developed country with substantial industrial resources that had not been destroyed by war. But starting in the 1960's, when the industrial might of the European countries and Japan had been restored, I think it became evident that we could not continue to have these surpluses. Indeed, they started disappearing when we got into the 1970's.

I don't mean to say that the structural factors I described are the only reason for our trade deficit now. There is, obviously, domestic competitiveness, generally, the value of the dollar, the productivity of American workers, and the cost of resources. All of those things go into our ability to sell and compete effectively in world markets.

I was addressing myself to a behavioral phenomenon one finds remarkably consistently when you talk to large businessmen doing business in global markets.

Mr. **Bingham**. I am not going to ask you any questions about the problem of bank participation because that is within the jurisdiction of the Committee on Banking. These bills have been referred simultaneously to the Banking Committee.

ACTIVITIES OF EXPORT TRADING COMPANIES

Let me ask you whether in your judgment the bills before us permit export trading companies to invest abroad?

Mr. **Herzstein**. They would not prohibit it so long as the export trading company continues to function primarily to promote exports from the United States.

The term "export trading company" is defined in section 103(a)(5) as a company organized and operated principally for the purpose of exporting goods or services produced in the United States or facilitating those exports. So the export trading company could do other things. It could have some manufacturing operations in the United States, and it could import and it could invest abroad. But it would have to meet that test in the statute.

PENALTIES FOR ANTITRUST VIOLATIONS

Mr. Bingham. If an export trading company were decertified for exceeding its antitrust exemption, do you feel that it should be subject to prosecution on felonies for antitrust violations?

Mr. Herzstein. Not for activities that were within the scope of the description set forth in the certification, if those activities took place while the certification was still in effect.

Mr. Bingham. But my question assumes that it went beyond that.

Mr. Herzstein. If it went beyond the scope of the certification, and then it was decertified for that reason.

Mr. Bingham. Yes.

Mr. Herzstein. Yes; I think our feeling would be that it would be subject to normal antitrust liability for activities that are outside the scope of the certificate, whenever those are conducted.

EXISTING WEBB-POMERENE ASSOCIATIONS

Mr. Bingham. We had testimony the other day from two associations that operate successfully under the existing Webb-Pomerene Act. They expressed concern that our legislation might in some way interfere with their operations.

Would you agree that we should make clear in legislation that we are not intending to interfere with their going operations, or require them to meet some new standards that they don't now meet?

Mr. Herzstein. We feel that section 8 should take care of their concerns. It requires the Secretary of Commerce to certify any preexisting export trade association that has been registered with the Federal Trade Commission so long as the association files an application within a specified time, unless the application shows on its face that the association is not eligible for certification.

So I think that most of the existing associations, if not all of them, could meet that test, and it should take care of their concern.

Mr. Bingham I understand that they are not satisfied with that provision. But we will have to pursue that further.

Has the Department of Justice concurred in the administration recommendation with respect to this act, particularly the antitrust parts?

Mr. Herzstein. Yes; it has. We have discussed those at great length, and the provisions set forth in here have been carefully worked out with them. There were the two minor disagreements I mentioned earlier. They are quite small, but perhaps it would be good to mention them so that we do justice to the concerns of the Antitrust Division. They are almost technical, and are probably a result of drafting errors.

Mr. Bingham. Mr. Lagomarsino.

Mr. Lagomarsino. Thank you, Mr. Chairman.

I would like to ask one question about banks. Why is there opposition to allowing banks to offer export credit services?

Mr. Herzstein. It is simply a result of the tradition of separating banks from other business which has been a very strong part of our banking laws for some years, stemming from the Glass/Stiegel Act. I think that it is the same aversion to having banks getting into any other nonbank related activity.

STATE AND LOCAL GOVERNMENT PARTICIPATION

Mr. LAGOMARSINO. One version of the bill allows State and local governments to be involved in this program. What is the administration's position on that?

Mr. HERZSTEIN. We don't feel the problem of whether State and local governments should be active in businesses in competition with the private sector is a question that needs to be addressed in the legislation. It raises problems of a generic nature. Some State and local governments are getting into business of one kind or another, and it raises antitrust problems. It raises questions of equity, whether a nontaxable business provides unfair competition to a business that has to pay taxes.

So the bills that we have endorsed are simply neutral on that question.

DISC BENEFITS FOR EXPORT TRADING COMPANIES

Mr. LAGOMARSINO. Concerning taxation, why would extending DISC benefits be too great a financial cost? I understand that that was your position.

Mr. HERZSTEIN. Yes; it is.

The estimates of the Treasury Department are that extending them as provided in this legislation could run into hundreds of millions of dollars, and we just feel that the benefits to be gotten from applying the DISC provisions in that extended way would not justify that cost.

There are other problems under the international trade agreements that I alluded to in my testimony, also.

Mr. LAGOMARSINO. When you compute that several hundred million dollars, are you computing that on the basis of what the present act's words are, or what would be expected if this whole effort is successful?

Mr. HERZSTEIN. Mr. Hufbauer of the Treasury Department has just come in; perhaps he would like to address that.

STATEMENT OF GARY C. HUFBAUER, DEPUTY ASSISTANT SECRETARY FOR TRADE AND INVESTMENT POLICY, DEPARTMENT OF THE TREASURY

Mr. HUFBAUER. If this proves too complicated, I will ask one of my tax colleagues to join me.

An estimate was made in some detail based on existing exports of services. I will supply this estimate for the record.[1]

The reason the estimate is several hundred million dollars is that the bill as drafted enlarges the definition of services which would be eligible for DISC status beyond what is already eligible for DISC status.

The present DISC treatment does cover a number of services connected with exports, but the bill would provide an open-ended definition of eligible services. It would cover, for example, accounting services that were rendered by U.S. accounting firms to a foreign subsidiary of a U.S. corporation. The accounting firm could have an inte national division. The division might qualify as a provider of expo services, the division would suddenly be eligible for DISC treatmer

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[1] Treasury's revenue cost estimate is retained in subcommittee files.

Based on these considerations, we came up with an estimate of son $2 to $500 million as the revenue cost, just because of the addition coverage, quite apart from new business that might be generated l export trading companies. The upshot is that the administration se no need for new tax provisions in the export trading companies legi lation that would reopen the DISC statute. Rather, we would just lea the DISC as it is and the ETC's can fully benefit from the existin provisions.

Mr. Lagomarsino. You don't think that it is likely that the extr revenue generated by setting these new organizations up will more tha compensate for the loss that you have just referred to?

Mr. Hufbauer. Congressman, that question, I think, falls into th generic category of ripple or feedback kinds of questions that are ir creasingly raised for all revenue estimates. It may be true that ther would be some favorable ripple effects, or feedback effects, that woul offset the estimate I have just given. But it would also be true of great many other tax relief measures that could be contemplated, fo example, tax relief to farmers, investment tax credits, and so on.

The Treasury tries to make revenue estimates that are comparabl across a range of possible tax measures. Some believe that nearly an tax cut will produce a ripple effect that will more than pay for th initial cut. But still one must have a ranking of the effect of differen tax measures, and these revenue estimate numbers attempt to provid that ranking.

I think it would be misleading to calculate ripple effects for just on tax measure, and not for other competing tax measures.

EXISTING EXPORT ASSOCIATIONS

Mr. Lagomarsino. The chairman asked about this, and I would lik to zero in on it a little bit more. Do I take it that you just don't feel i is necessary to have a "grandfather" clause for Webb-Pomerene asso ciations, or that you oppose such an amendment?

Mr. Herzstein. We felt that we had one in section 8 of the bill. I don't think that we are necessarily wedded to the details of that provision. We are not frankly familiar with the ways in which some of the existing association may feel that does not take care of them.

Mr. Lagomarsino. Perhaps you should review their testimony, and I am sure you will, but as I understand their concerns—there are two concerns. One is sort of to the effect, "Why should we go through this all over again. We have done it once, why go through the uncertainty, the expense, the delay, the time, the anxiety, and so on, when we are already operating." I share that feeling. I don't see any need for a recertification. If they violate the law, the remedies are available now.

The second part is that if we don't have some kind of language indicating that what has gone in the past is still acceptable, then all of the activities that they are now engaged in that have not been considered to be outside of the scope or the authority of Webb-Pomerene Act, or other laws, could be questioned.

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I think that that is what they are seeking. They don't want the whole body of law relating to these things thrown out arbitrarily. Again, I share that concern. There may be different ways of addressing it.

Mr. HERZSTEIN. That is correct.

As to the second problem, I don't think we contemplated that they would be exposed to liability for past conduct as a result of the enactment of this law that they would not have been exposed to if the law had not been enacted. We would be glad to have that made clear, if it is not already clear in here.

Mr. LAGOMARSINO. I think that this is one of the main things that they are worried about.

Thank you, Mr. Chairman.

Mr. BINGHAM. Mr. Bonker.

Mr. BONKER. Thank you, Mr. Chairman.

ENCOURAGING FORMATION OF EXPORT TRADING COMPANIES

Mr. Herzstein, between 1930 and 1935 the number of trade associations under Webb-Pomerene numbered 57, and accounted for 19 percent of the total U.S. exports. In 1979 that number had dwindled to 33, and the share of U.S. exports under Webb-Pomerene dipped to less than 2 percent.

There does not seem to be interest or enthusiasm to organize and apply for waivers under Webb-Pomerene. Yet, we are working on legislation now to allow the formation of trading companies. Can you shed some light on the reasons why more trade associations are not forming under Webb-Pomerene?

Mr. HERZSTEIN. Yes. I should say that we are trying to breathe new life into the Webb-Pomerene bill by the certification procedure.

I think the reason the Webb-Pomerene associations went out of fashion is that, No. 1, the court decisions over the years made it clear that antitrust liability could be quite severe, indeed, and greatly increased the fears of the companies operating these joint associations.

No. 2, the way the Webb-Pomerene Act reads there is no way to get advance assurance that the activities you are planning to engage in will be immune from liability. You have to rely on your own reading of the statute, and perhaps your lawyer's opinion. It is getting harder and harder to get lawyers to give opinions that proposed activities under the existing Webb-Pomerene Act would, in fact, be immune.

Mr. BONKER. The Senate committee, in its report on S. 2718, said that there were essentially four reasons: First, because U.S. industry lacks sufficient product market domination to exert foreign market price control; second, because U.S. business traditionally placed top priority on domestic consumer markets, and was much slower to focus on international markets; and third, the ever expanding U.S. service industries had been excluded from qualifying for the act's antitrust exemptions, while cooperative and joint ventures had become increasingly important.

The last reason, I think, is significant, and it has been touched upon. The Department of Justice, and to a lesser extent the Federal Trade Commission, have been perceived by the business communities as exhibiting a thinly veiled hostility for Webb-Pomerene associations.

You did not talk about the FTC or the Justice Department. Y talked about the courts. Almost everybody who has appeared as a wi ness has indicated that hostility is found more clearly in the depar ments within the government, and not necessarily the courts.

Would you care to comment on that?

Mr. HERZSTEIN. I don't think I have enough evidence in my own e perience to say whether it is right or wrong that the enforcement a thorities were properly perceived as having antagonism for the statutes.

I don't think there were many prosecutions for antitrust violation against Webb-Pomerene associations. So if one looks at the prosecu tion record, you don't find evidence for that.

Mr. BONKER. Do you think that it is a perception problem mor than a reality problem?

Mr. HERZSTEIN. I think it is more a problem that antitrust enforce ment has gotten very vigorous and Congress has increased the penal ties very substantially. So there is much more of a general concer among businessmen about antitrust in general, and not just Webb Pomerene.

Ambassador HORMATS. I think the problem really is the uncertaint involved in the Webb-Pomerene exemption. When you talk to people in the final analysis they cannot really point so much to a specifi prosecution, but to the general uncertainty of trying to apply for a exemption and getting it. They are worried about coming up agains the Justice Department.

CERTIFICATION PROCEDURES

One of the virtues of this legislation is that it increases quite significantly the degree of certainty involved in creating an export trading company.

Mr. BONKER. It increases it in this way: It transfers from the FTC, and to a smaller extent from the Justice Department, the authority, or at least the lead agency, for handling these applications. It places the responsibility with the Department of Commerce.

Will the perception be that, unlike FTC and Justice, which are considered adversarial in their relationships with the business community, the Department of Commerce might be more of an advocate.

Ambassador HORMATS. It is difficult to judge how the business community is going to perceive it, although many may perceive it that way.

Mr. BONKER. It is obviously a major problem if we are going to allow the formation of trading companies.

Ambassador HORMATS. Yes, but I think the second, and perhaps the most important, element of this is that they get prior certification. They know the conditions under which they can maintain an export trading company, and that gives them the certainty.

Mr. BONKER. Isn't there a certification procedure now?

Mr. HERZSTEIN. No; there is not.

Mr. BONKER. So the business must apply to the FTC under the present system?

Mr. HERZSTEIN. No. Under the present system they simply register with the FTC, but they get no response from the FTC as to whether they are OK or not. They have to act at their own peril.

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Mr. **Bonker.** So by establishing a certification procedure and eligibility criteria there will be greater certainty when the companies apply.

Mr. **Herzstein.** That is it.

Mr. **Bonker.** Once that certification is approved for a particular trading company, then they have assurance that they enjoy exemptions.

Ambassador **Hormats.** So long as they comply with the terms.

Mr. **Bonker.** There is also a procedure for followup that may not necessarily be legal, but is a process for taking away that certification?

Ambassador **Hormats.** Yes.

Let me just return to the point about services because I think it is a good one. More and more American firms are very competitive in the services area around the world, and their inability to form Webb-Pomerene companies to take advantage of this competitiveness has hurt them badly, particularly in growing markets in developing countries.

Most other countries do have export trading companies which cover services.

Mr. **Bonker.** Let me ask you another question, Mr. Hormats.

EXPORTS OF FOREST PRODUCTS

I was visiting the other day with a number of small mills in the State of Washington which should be competing with the Japanese market in dimension lumber. The issue, as you know, is that we have been exporting the logs, and denying ourselves an opportunity to export the finished product.

They say that this bill, if it is enacted, is not going to help much. I said, "Why? There is a tremendous market out there." They said, because the Japanese have been so successful in erecting nontariff barriers, that even with an export trading company, even with all the resources they can bring to bear to compete for that market, because Japan has persistently applied these nontariff barriers, they just cannot penetrate the market.

I said that according to agreements that we have negotiated with other countries, those barriers ought not to be there. So I am going to take advantage of your appearing before us now to ask you to comment because it is a very serious problem.

Ambassador **Hormats.** It is a very serious problem.

We have established with the Japanese a United States-Japan Bilateral Forest Products Commission which is dealing with this problem. My impression was that the Japanese were making an effort to buy forest products with higher value added, that is, the secondary products, such as lumber and plywood.

My impression was that we were having, as a result of this, a somewhat easier time in getting into the Japanese market. If there are still problems, and I gather from your comments that there are, we will certainly investigate them. We would be delighted to talk to the companies and go back to the Japanese if there are these nontariff barriers and other distributional problems which frequently inhibit access to the Japanese market.

We believed that we had taken a major step with our arrangement with the Japanese; however, frequently, steps that appear in the right direction do not always come out as planned. I will be delighted to talk to those companies, and followup with the Japanese, if possible.

Mr. Bonker. I will follow that up.

Ambassador Hormats. I will be delighted because we should be doing something there.

Mr. Bonker. Mr. Herzstein, you said that the administration opposes increasing the DISC tax provision, but that it would be naturally expanded under provisions of the act. I wonder if it is not possible to address what has become a serious problem in our export business, that of exporting unprocessed, natural, or raw resources as opposed to the finished product. There is just too much resistance to placing restrictions on the export of those commodities.

Could we not use the DISC in a more creative and positive way by applying extended benefits, or greater benefits toward the export of finished, processed, or manufactured goods to distinguish between the raw resources and the finished product?

Mr. Herzstein. As we note in our testimony, there is a shadow of a problem under the International Subsidies Code that would be encountered by any expansion of the DISC. The DISC has been challenged by some of our trading partners as an improper export subsidy. I think if one tried to expand it that undoubtedly would signal a new challenge.

Whether they would end up prevailing or not in the adjudicatory proceedings under the GATT, we don't know. But at least one should be forewarned of that.

Obviously, if it were consistent with the international rules, and one did it, I think a financial incentive to those who export processed goods would obviously improve their competitiveness. The big question is whether that is an activity that the United States wants to engage in with all the legal risks and dangers of spreading that practice abroad.

Mr. Bonker. I have many more questions, but I can see that we are limited by time.

Mr. Bingham. Without objection, members may submit additional questions in writing, and I trust that the administration witnesses will answer them.

Mr. Gilman.

Mr. Gilman. Mr. Chairman, since our time is limited by the rollcall vote, I may submit questions in writing.

Thank you, Mr. Chairman.

Mr. Bingham. We want to thank you very much, gentlemen. Again, let me apologize for the delay in beginning our hearing.

Mr. Herzstein. Thank you, Mr. Chairman.

Mr. Bingham. The subcommittee will stand adjourned.

[Whereupon, at 4:30 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

EXPORT TRADING COMPANIES

WEDNESDAY, JUNE 18, 1980

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL
ECONOMIC POLICY AND TRADE,
Washington, D.C.

The subcommittee met in open markup session at 2:15 p.m. in room 2172, Rayburn House Office Building, Hon. Jonathan B. Bingham (chairman of the subcommittee) presiding.

Mr. BINGHAM. The Subcommittee on International Economic Policy and Trade will be in order.

The subcommittee meets today to mark up legislation to encourage the formation and operation of export trading companies. The members have before them a comparative print showing S. 2718, introduced by Mr. Stevenson, which is the bill as it has been reported out of the Banking Committee in the Senate; S. 2379, which was an earlier version; H.R. 5061, introduced by me in August of last year; and H.R. 7230, introduced by the gentleman from Washington, Mr. Bonker, this year.[1]

It is the Chair's suggestion that we use H.R. 7230 as the markup vehicle and that we proceed today with an informal mark up, because I think we will be drawing on at least three of these bills. It will be rather complicated, and we will need a new print before we formally report the bill to the full committee, which I hope we will.

First I would ask if there is objection to using H.R. 7230 as the basic markup vehicle.

Mr. BONKER. Mr. Chairman, I certainly do not object.

Mr. BINGHAM. The gentleman from Washington does not object to using his bill as a markup vehicle.

[The text of H.R. 7230 follows:]

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[1] S. 2718 is identical to H.R. 7436; S. 2379 is identical to H.R. 7310.

96TH CONGRESS
2D SESSION

H. R. 7230

To direct the Secretary of Commerce to encourage the formation and operation of export trading companies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 1980

Mr. BONKER (for himself, Mr. BINGHAM, Mr. LAGOMARSINO, Mr. BARNES, Mr. FRENZEL, and Mr. WOLPE) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs and the Judiciary

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A BILL

To direct the Secretary of Commerce to encourage the formation and operation of export trading companies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Promotion and Export Trading Company Act of 1980".

STATEMENT OF PURPOSE AND FINDINGS

SEC. 2. (a) It is the purpose of this Act, in order to make United States exporters more competitive with exporters of other countries, to direct the Secretary of Commerce to encourage and promote the formation and operation of export trading companies by providing advice and information to interested persons.

(b) The Congress finds that—

(1) the Department of Commerce has as one of its responsibilities the development and promotion of United States exports;

(2) the Department of Commerce also has the responsibility of facilitating the export of finished products from United States manufacturers;

(3) tens of thousands of United States companies produce exportable goods or services but do not engage in exporting;

(4) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through producer-owned export trading companies;

(5) exporting requires extensive specialized knowledge and skills and entails risks, not otherwise assumed, the costs of which smaller producers cannot absorb because of an inability to achieve economies of scale;

(6) exporting services in the United States are fragmented into a multitude of separate functions; companies attempting to offer comprehensive export trade services lack financial leverage to reach a significant number of potential United States exporters;

(7) the United States lacks well-developed export trade intermediaries, such as trading companies, which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(8) the development of export trading companies in the United States has been hampered by insular business attitudes and by Government regulations;

(9) entities which are owned or subsidized by foreign governments compete directly with private United States exporters for shares of the world market;

(10) the rapidly growing service-related industries are vital to the well-being of the United States economy since they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products; and

(11) small- and medium-sized businesses in the United States engaged in international transactions

would benefit from the development of export trading companies, which would enable them to pool resources and technical expertise and to achieve economies of scale and would otherwise assist them in competing in foreign markets.

DEFINITIONS

SEC. 3. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods produced in the United States, or services produced in the United States, which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "goods produced in the United States" means goods manufactured, produced, grown, or extracted in the United States, not more than 50 per centum of the fair market value of which is attributable to articles imported into the United States;

(3) the term "services produced in the United States" includes, but is not limited to, amusement, architectural, automatic data processing, business, communications, consulting, engineering, financial, insurance, legal, management, repair, training, and transportation services, not less than 50 per centum of the fair market value of which is provided by United

States citizens or is otherwise attributable to the United States;

(4) the term "export trade services" includes, but is not limited to, international market research, advertising, marketing, insurance, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(5) the term "export trading company" means a company which does business under the laws of the United States or any State and which is organized and operated principally for the purpose of—

(A) exporting goods produced in the United States or services produced in the United States; and

(B) facilitating the exportation of goods produced in the United States or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands,

American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(7) the term "Secretary" means the Secretary of Commerce;

(8) the term "State" includes the District of Columbia; and

(9) the term "company" means any corporation, partnership, association, or similar organization.

(b) The Secretary may by regulation further define any term defined in subsection (a), in order to carry out the purposes of this Act.

FUNCTIONS OF THE SECRETARY

SEC. 4. The Secretary shall promote and encourage the formation and operation of export trading companies by providing information and advice to interested persons. The Secretary shall provide a referral service to facilitate contact between producers of exportable goods and services and concerns offering export trade services.

ELIGIBILITY OF STATE OR LOCAL GOVERNMENT-OWNED EXPORT TRADING COMPANIES

SEC. 5. Nothing in this Act preempts or otherwise restricts or prevents any State or local government or other governmental authority from organizing, owning, or otherwise participating in or supporting export trading companies.

ELIGIBILITY UNDER THE WEBB-POMERENE ACT

SEC. 6. Section 2 of the Webb-Pomerene Act (15 U.S.C. 62) is amended—

(1) by inserting after "engaged solely in such export trade," the following: "or with respect solely to its export trade (as defined in section 3(1) of the Export Promotion and Export Trading Company Act of 1980), any export trading company as defined in section 3(5) of the Export Promotion and Export Trading Company Act of 1980,"; and

(2) by inserting "or such export trading company" after "association" each place, after the first, it appears.

TASK FORCE STUDY

SEC. 7. Five years after the date of the enactment of this Act, the President shall appoint a task force to study the effect the operation of this Act on domestic competition and on the trade deficit of the United States and to recommend either continuation, revision, or termination of this Act and the amendments made by this Act. Such task force shall, within one year after its appointment, complete such study and submit such recommendations to the President.

Mr. Bingham. Now, because there are certain items in the section on ndings, which starts on page 2 of the comparative print, that will epend somewhat on the action we take later, I propose that we lay ide the section on the findings, and also on definitions, and that we roceed to the first substantive section starting on page 7 of the com-arative print headed "Functions of the Secretary"—that is the Sec-tary of Commerce—section 4.

I would ask that we consider section 4 as read. Are there amend-ents to section 4 as it appears in H.R. 7230? Hearing none, we can roceed to the next topic, which is a topic not covered in either of the ouse bills, the matter of bank participation.

BANK PARTICIPATION

I would like to make some comments about our inclusion of such rovisions in the bill at this time. First of all, I think it is important hat the bill contain some bank participation provisions if it is to be ffective in achieving its goal of expanding U.S. exports. Virtually all f the witnesses testified that adequate financing is a major problem f existing export companies and a major advantage enjoyed by for-ign export companies; that is, by export companies established by oreign countries.

Inclusion of a provision for bank participation will require that the ill we report out be referred to the Banking Committee of the House nd that committee, of course, will want to look it over.

I think, however, that we in this committee have an obligation to peak at least to the basic question of bank participation because we ave jurisdiction over, and I quote from the rule, "export promotion," nd in my view bank participation is an important part of export romotion.

I believe that the provisions covering bank participation in the Sen-te bill, that is, S. 2718, are on the whole workable and balanced. The anks are permitted to invest in export trading companies, but are ubject to strict regulation and to numerous limitations to preclude ossible undesirable side effects, particularly upon bank depositors.

If the investment is to exceed $10 million, or if the investment would ut the bank in control of an export trading company, the bank would ave to obtain Federal regulatory agency approval before making the nvestment. In no case may a bank invest more than 5 percent of its onsolidated capital and surplus in export trading companies; nor nay a bank commit more than 10 percent of its capital and surplus in oth investments and loans to a single export trading company.

I will repeat that because it is a little complicated. The 5 percent pplies to investment in the equity of one or more export trading companies—no more than 5 percent of the capital and surplus in that type of equity investment. The 10 percent limitation applies to both investment and loans to any given export trading company.

Now, these provisions do make possible bank control of export rading companies but, as I have said, only subject to prior Federal regulatory agency approval based upon existing banking laws, which are elaborate and stringent.

I think that is all I need to say at this point on that subject. Just to conclude then, it would be my proposal that we tentatively adopt the provisions of S. 2718 governing bank participation as an amendment to H.R. 7230—and that runs from page 7 line 16 to page 21, line 3—subject to any amendments that members may wish to offer.

[The amendment referred to follows:]

Ownership of Export Trading Companies by Banks, Bank Holding Companies, and International Banking Corporations

Sec. 105. (a) For the purpose of this section—

(1) the term "banking organization" means any State bank, national bank, Federal savings bank, bankers' bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(2) the term "State bank" means any bank which is incorporated under the laws of any State, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, or any bank (except a national bank) which is operating under the Code of Law for the District of Columbia (hereinafter referred to as a "District bank");

(3) the term "State member bank" means any State bank, including a bankers' bank, which is a member of the Federal Reserve System;

(4) the term "State nonmember insured bank" means any State bank, including a bankers' bank, which is not a member of the Federal Reserve System, but the deposits of which are insured by the Federal Deposit Insurance Corporation;

(5) the term "bankers' bank" means any bank which (A) is organized solely to do business with other financial institutions, (B) is owned primarily by the financial institutions with which it does business, and (C) does not do business with the general public;

(6) the term "bank holding company" has the same meaning as in the Bank Holding Company Act of 1956;

(7) the term "Edge Act Corporation" means a corporation organized under section 25(a) of the Federal Reserve Act;

(8) the term "Agreement Corporation" means a corporation operating subject to section 25 of the Federal Reserve Act;

(9) the term "appropriate Federal banking agency" means—

(A) the Comptroller of the Currency with respect to a national bank or any District bank;

(B) the Board of Governors of the Federal Reserve System with respect to a State member bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(C) the Federal Deposit Insurance Corporation with respect to a State nonmember insured bank except a District bank; and

(D) the Federal Home Loan Bank Board with respect to a Federal savings bank.

In any situation where the banking organization holding or making an investment in an export trading company is a subsidiary of another banking organization which is subject to the jurisdiction of another agency, and some form of agency approval or notification is required, such approval or notification need only be obtained from or made to, as the case may be, the appropriate Federal banking agency for the banking organization making or holding the investment in the export trading company;

(10) the term "capital and surplus" means paid in and unimpaired capital and surplus, and includes undivided profits and such other items as the appropriate Federal banking agency may deem appropriate;

(11) an "affiliate" of a banking organization or export trading company is a person who controls, is controlled by, or is under common control with such banking organization or export trading company;

(12) the terms "control" and "subsidiary" shall have the same meanings assigned to those terms in section 2 of the Bank Holding Company Act of 1956, and the terms "controlled" and "controlling" shall be construed consistently with the term "control" as defined in section 2 of the Bank Holding Company Act of 1956; and

(13) the term "export trading company" has the same meaning as in section 103(5) of this Act, or means any company organized and operating principally for the purpose of providing export trade services, as defined in section 103(4) of this Act.

(b)(1) Notwithstanding any prohibition, restriction, limitation, condition, or requirement of any other law, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of an Edge Act Corporation or Agreement Corporation not engaged in banking) in the voting stock or other evidences of ownership of one or more export trading companies. A banking organization may—

(A) invest up to an aggregate amount of $10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal banking agency, if such investment does not cause an export trading company to become a subsidiary of the investing banking organization; and

(B) make investments in excess of an aggregate amount of $10,000,000 in one or more export trading companies, or make any investment or take any other action which causes an export trading company to become a subsidiary of the investing banking organization or which will cause more than 50 per centum of the voting stock of an export trading company to be owned or controlled by banking organizations, only with the prior approval of the appropriate Federal banking agency.

Any banking organization which makes an investment under authority of clause (A) of the preceding sentence shall promptly notify the appropriate Federal banking agency of such investment and shall file such reports on such investment as such agency may require. If, after receipt of any such notification, the appropriate Federal banking agency determines, after notice and opportunity for hearing, that the export trading company is a subsidiary of the investing banking organization, it shall have authority to disapprove the investment or impose conditions on such investment under authority of subsection (d). In furtherance of such authority, the appropriate Federal banking agency may require divestiture of any voting stock or other evidences of ownership previously acquired, and may impose conditions necessary for the termination of any controlling relationship.

(2) If a banking organization proposes to make any investment or engage in any activity included within the following two subparagraphs, it must give the appropriate Federal banking agency sixty days prior written notice before it makes such investment or engages in such activity:

(A) any additional investment in an export trading company subsidiary; or

(B) the engagement by any export trading company subsidiary in any line of activity, including specifically the taking of title to goods, wares, merchandise, or commodities, if such activity was not disclosed in any prior application for approval.

During the notification period provided under this paragraph, the appropriate Federal banking agency may, by written notice, disapprove the proposed investment or activity or impose conditions on such investment or activity under authority of subsection (d). An additional investment or activity covered by this paragraph may be made or engaged in, as the case may be, prior to the expiration of the notification period if the appropriate Federal banking agency issues written notice of its intent not to disapprove.

(3) In the event of the failure of the appropriate Federal banking agency to act on any application for approval under paragraph (1)(B) of this subsection within the ninety-day period which begins on the date the application has been accepted for processing by the appropriate Federal banking agency, the application shall be deemed to have been granted. In the event of the failure of the appropriate Federal banking agency either to disapprove or to impose conditions on any investment or activity subject to the prior notification requirements of paragraph (2) of this subsection within the sixty-day period provided therein, such period beginning on the date the notification has been received by the appropriate Federal banking agency, such investment or activity may be made or engaged in, as the case may be, any time after the expiration of such period.

(c) The following limitations apply to export trading companies and the investments in such companies by banking organizations:

(1) The name of any export trading company shall not be similar in any respect to that of a banking organization that owns any of its voting stock or other evidences of ownership.

(2) The total historical cost of the direct and indirect investments by a banking organization in an export trading company combined with extensions of credit by the banking organization and its direct and indirect subsidiaries to such export trading company shall not exceed 10 per centum of the banking organization's capital and surplus.

(3) A banking organization that owns any voting stock or other evidences of ownership of an export trading company shall terminate its ownership of such stock if the export trading company takes positions in commodities or commodities contracts other than as may be necessary in the course of its business operations.

(4) No banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(d)(1) In the case of every application under subsection (b)(1)(B) of this section, the appropriate Federal banking agency shall take into consideration the financial and managerial resources, competitive situation, and future prospects of the banking organization and export trading company concerned, and the benefits of the proposal to United States business, industrial, and agricultural concerns, and to improving United States competitiveness in world markets. The appropriate Federal banking agency may not approve any investment for which an application has been filed under subsection (b)(1)(B) if it finds that the export benefits of such proposal are outweighed in the public interest by any adverse financial, managerial, competitive, or other banking factors associated with the particular investment. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

(2) In approving any application submitted under subsection (b)(1)(B), the appropriate Federal banking agency may impose such conditions which, under the circumstances of such case, it may deem necessary (A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices. With respect to the taking of title to goods, wares, merchandise, or commodities by any export trading company subsidiary of a banking organization, the appropriate Federal banking agencies shall establish standards designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor, including specifically practices pertaining to an export trading company subsidiary's holding of title to inventory. Such standards should be established no later than two hundred and seventy days after enactment of this Act, and opportunity should be provided for public comment and participation in developing such standards. If an export trading company subsidiary of a banking organization proposes to take title to goods, wares, merchandise, or commodities in a manner which does not conform to such standards, or prior to the establishment of such standards, it may only do so with the prior approval of the appropriate Federal banking agency and subject to such conditions and limitations as it may impose under this paragraph.

(3) In determining whether to impose any condition under the preceding paragraph (2), or in imposing such condition, the appropriate Federal banking agency must give due consideration to the size of the banking organization and export trading company involved, the degree of investment and other support to be provided by the banking organization to the export trading company, and the identity, character, and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions or set standards for the taking of title which unnecessarily disadvantage, restrict or limit export trading companies in competing in world markets or in achieving the purposes of section 102 of this Act. In particular, in setting standards for the taking of title under the preceding paragraph (2), the appropriate Federal banking agencies shall give special weight to the need to take title in certain kinds of trade transactions, such as international barter transactions.

(4) Notwithstanding any other provision of this Act, the appropriate Federal banking agency may, whenever it has reasonable cause to believe that the ownership or control of any investment in an export trading company constitutes a serious risk to the financial safety, soundness, or stability of the banking organization and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the banking organization, after due notice and opportunity for hearing, to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its investment in the export trading company.

(5) On or before two years after enactment of this Act, the appropriate Federal banking agencies shall jointly report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives their recommendations with respect to the implementation of this section, their recommendations on any changes in United States law to facilitate the financing of United States exports, especially by smaller and medium-sized business concerns, and their recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

(e)(1) Any party aggrieved by an order of an appropriate Federal banking agency under this section may obtain a review of such order in the United States court of appeals within any circuit wherein such organization has its principal place of business, or in the court of appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the order was based. The court shall set aside any order found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or (D) without observance of procedure required by law. Except for violations of subsection (b)(3) of this section, the court shall remand for further consideration by the appropriate Federal banking agency any order set aside solely for procedural errors and may remand for further consideration by the appropriate Federal banking agency any order set aside for substantive errors. Upon remand, the appropriate Federal banking agency shall have no more than sixty days from date of issuance of the court's order to cure any procedural error or reconsider its prior order. If the agency fails to act within this period, the application or other matter subject to review shall be deemed to have been granted as a matter of law.

(f)(1) The appropriate Federal banking agencies are authorized and empowered to issue such rules, regulations, and orders, to require such reports, to delegate such functions, and to conduct such examinations of subsidiary export trading companies, as each of them may deem necessary in order to perform their respective duties and functions under this section and to administer and carry out the provisions and purposes of this section and prevent evasions thereof.

(2) In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this section may be enforced under section 8 of the Federal Deposit Insurance Act by any appropriate Federal banking agency defined in that Act.

Mr. Bingham. The gentleman from Illinois.

Mr. Findley. Mr. Chairman, I concur with the statement you have made. I think that it would be entirely appropriate for the language of S. 2718 to be adopted tentatively.

I want to add, too, that I believe we will find substantial Republican support for that provision. It certainly exists in the Senate and I think also among our colleagues here in the House. It must be obvious to anyone who has dealt in international trade that banking connections are vital to the success of an international trading company. Yes, I think it would be very unwise to try to put too much participation of banks into this sort of activity. I support what the chairman has recommended.

Mr. Bingham. Thank you. Mr. Bonker.

Mr. Bonker. Mr. Chairman, I, too, support adding the Senate section that allows for bank participation. Although the House bill excludes this provision, I think there is reason for it, and we know that the bill will have a sequential referral to the House Banking Committee and at that time they can look more closely at the provisions.

I feel that the controls to which you refer are sufficient to prevent bank dominance, but it allows the banks to participate actively in the formation of export trading companies. So I think it is a valuable addition to the legislation.

Mr. BINGHAM. I thank the gentlemen, and I would note that the chairman of the Committee on Banking, Finance and Urban Affairs, Mr. Reuss, has introduced H.R. 7436, which contains provisions I believe to be identical with S. 2718. So I think we can look forward to at least sympathetic review on the part of the chairman and, hopefully, other members of the Banking Committee.

I will formally move adoption of the provisions starting on line 16, page 7, through line 3 on page 21 as an amendment to H.R. 7230. Without objection, the reading of the amendment is dispensed with and those sections are now open for amendment.

If there are no other amendments, I have an amendment to offer on page 15. The amendment has been passed out. While the members are looking at it, may I say a word about it.

[The amendment referred to follows:]

Page 15, insert the following after line 16:

(d) (1) Before the appropriate Federal banking agency exercises the authority of this subsection to approve, disapprove, or impose conditions on a proposed investment or activity, such agency shall transmit a copy of such proposal to the Secretary of Commerce. The Secretary may present to such agency the views of the Department of Commerce on the proposal. In weighing the export related benefits of such proposal, such agency shall consider any views of the Department of Commerce submitted under this paragraph.

Page 15, line 17, strike out "(d) (1)" and insert in lieu thereof "(2)". Redesignate subsequent paragraphs accordingly.

Mr. BINGHAM. I said earlier that I think it is important that there be full and strict Federal regulatory review in important cases of bank participation in export trading companies. I am concerned, however, that the Senate provisions do not require that the export benefits derived from that participation be considered by the bank regulatory agency.

Since the whole purpose of this act is to further exports, I think it is useful to require, as the amendment does, that the bank regulatory agencies consider the views of the Department of Commerce on the importance of the investment in its relation to exports, and that is all that the amendment does.

Mr. BONKER. Mr. Chairman.

Mr. BINGHAM. Yes. Mr. Bonker.

Mr. BONKER. The amendment provides that before the banking agency acts, it shall transmit a copy of said proposal to the Secretary of Commerce.

Mr. BINGHAM. Right.

Mr. BONKER. So that is a mandatory provision. And then you say, "The Secretary may present to such agency the views of the Department." I am wondering whether the agency is required to respond orally or submit its views in writing and if there is a time period involved. Otherwise, we might hold up the process if the banking agency has to wait for Commerce to respond.

I am afraid that unless we specify a time period for response, the result will be to slow down the process.

Mr. **Bingham.** I think the gentleman raises a good point. Do you have an amendment to suggest to correct that? I think it can be corrected quite simply.

Mr. **Bonker.** If we can pass over this, I can have staff draft some language that would be acceptable.

Mr. **Bingham.** Why don't we discuss in principle what would be reasonable. Thirty days for the Department of Commerce to express its views?

Mr. **Bonker.** I would say no longer than 30 days and state it in such a way that the Secretary must inform the banking agency within 30 days of its views; otherwise, the banking agency can proceed with its work.

Maybe we could say, "Within 30 days the Secretary must inform such agency of the views of the Department of Commerce."

Mr. **Bingham.** I think that is the essence of it. Is that agreeable?

Mr. **Findley.** I agree with that.

Mr. **Bingham.** May we consider the amendment adopted subject to staff working out the precise language. Is there objection to the adoption of that amendment as amended? If not, it stands approved.

AUTHORIZATION FOR DEPARTMENT OF COMMERCE

Mr. **Bonker.** Mr. Chairman, if we have reached page 21, I have an amendment. I would like to move that section 106 of Senate bill 2718 be included, excluding the fiscal 1981 authorization provision for the Department of Commerce. In view of the fact that the House has already acted on the budget resolution, the purpose is to remove that authorization for 1981 so we do not run into problems with the Budget Committee and the resolution, which has already set limits for fiscal year 1981. So there will be no authorization for that year.

[The amendment referred to follows:]

INITIAL INVESTMENTS AND OPERATING EXPENSES

Sec. 106. (a) The Economic Development Administration and the Small Business Administration are directed, in their consideration of applications by export trading companies for loans and guarantees, including applications to make new investments related to the export of goods or services produced in the United States and to meet operating expenses, to give special weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small or medium-size businesses or agricultural concerns in the export market.

(b) There are authorized to be appropriated as necessary to meet the purposes of this section, $20,000,000 for each fiscal year, 1981, 1982, 1983, 1984, and 1985. Amounts appropriated pursuant to the authority of this subsection shall be in addition to amounts appropriated under the authority of other Acts.

Mr. **Bingham.** The gentleman is suggesting that section 106 from S. 2718 be included in the bill at this point with the omission of the year 1981 in line 19 on page 21?

Mr. **Bonker.** That is correct.

Mr. **Bingham.** Is there objection? Hearing none, it is so ordered. Are there further amendments to section 106? If not, that is approved without objection.

I propose we now include section 107, starting on page 22, line 8, and running through page 23, line 6. This directs the Export-Import Bank to provide guarantees for loans secured by accounts receivable and inventory of export trading companies under some circumstances.

[The amendment referred to follows:]

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

Sec. 107. The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other private creditors to export trading companies as defined in section 103(5) of this Act, or to other exporters, when such loans are secured by export accounts receivable or inventories of exportable goods, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

Mr. Bingham. One of the reasons export trading companies have difficulty getting financing at any moment in time is because much of their assets may be in accounts receivable or inventory.

Private banks, especially those unfamiliar with exporting, have been reluctant to extend loans on that basis, particularly on accounts receivable. The Senate language provides some discretion to the Exim Bank Board in providing guarantees that would encourage private banks to make such loans, and it sets forth the circumstances under which this would be desirable. It does not create any new budgetary authority. For that reason, I see no difficulty in including it, subject, of course, to the review it will have by the Banking Committee.

From an export promotion point of view, it seems like a most appropriate service for the Exim Bank to perform in encouraging exports.

Is there objection to including section 107 as an amendment to the bill? If not, we will proceed. Mr. Bonker.

Mr. Bonker. I was just going to ask if that would involve any cost.

Mr. Bingham. No; no authorization that is not included already in the Export-Import Bank's authorization. It simply adds to the flexibility of the Export-Import Bank in its operation. Again, it would have to be reviewed by the Banking Committee.

STATE AND LOCAL GOVERNMENT PARTICIPATION

Now, the next item to be considered—and this is one that I would like to have the views of the gentleman from Illinois on, because I think we may have a problem with this—is section 5 of H.R. 7230 on page 23: "Eligibility of State or Local Government-Owned Export Trading Companies."

I recognize the gentleman from Washington first, because I know he has views on this. I think it is something we ought to consider.

Mr. Bonker. Mr. Chairman, we discussed this during the hearings. I have a particular concern that governmental entities, particularly port districts, be allowed to participate. I am not sure that section 5 of the bill is the place for that provision, and possibly it can be covered under the findings, as it has been in the Senate bill.

I would defer to the chairman's judgment, as long as we have the provision somewhere that allows governmental entities to participate in the formation of trading companies.

Mr. Bingham. I think it is not a question of placement; it is a question of whether we want to allow State and local government participation. If we are to allow it, I see no harm in including it at this point.

Mr. Findley. Mr. Chairman, could someone identify the problem? Do port authorities engage as trading entities? Personally, I am not enamored to a State trading, whether it be a State within the Union or the entire Nation, but I frankly do not know the extent to which governmental agencies are engaged in trading.

Mr. Bonker. I think the question is whether we prohibit, in this case, port districts from participating in the formation of export trading companies.

Mr. Findley. Port districts, and only port districts—that is all that is involved here?

Mr. Bonker. Well, the way the language is on the Senate side and the bill that is before us, H.R. 7230, we identify State and local government activity rather than identifying port districts as one governmental entity that would be allowed to participate.

Mr. Findley. What would be the effect if this bill is silent on that question?

Mr. Bingham. Will the gentleman yield to me at this point?

Mr. Bonker. Yes

Mr. Bingham. I am wondering if it would not be satisfactory to Mr. Bonker to leave this section 5 out and to rely on finding No. 6 of S. 2718 on page 3. That really leaves it up to the State and local governments to determine for themselves what kind of a role they want to play.

[Sec. 102(a)(6) of S. 2718 follows:]

(6) State and local government activities which initiate, facilitate, or expand export of products and services are an important and irreplaceable source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

Mr. Bonker. I would be amenable to that if we could add after "State and local government" "and other governmental authorities."

Mr. Bingham. We want to exclude Federal, do we not?

Mr. Bonker. I think we should. Maybe we ought to say, "State and local governmental authorities," and I think that would be inclusive.

Mr. Bingham. It would read then, "Activities of State and local governmental authorities"?

Mr. Bonker. Yes.

Mr. Bingham. If that is agreeable, then I suggest that we delete section 5 on page 23.

We will now go back to the findings section, which we are ready now to consider.

Mr. Findley. Mr. Chairman.

Mr. Bingham. Yes, Mr. Findley.

Mr. Findley. It has been called to my attention that Mr. Lagomarsino suggested that language in No. 6 read, "State, local and other governmental entities which initiate," and so forth.

Mr. Bingham. I think the language we just proposed is better than that because that would include Federal, and I do not think we need Federal at this point.

Mr. Findley. You are right.

Mr. Bingham. So if we say, "Activities of State and local governmental authorities," I think that covers the same ground without raising the question of Federal participation.

FINDINGS

Are there other amendments then to the section on "findings" on pages 2 and 3 of the comparative print? I was going to suggest that here the staff be authorized to combine the findings as they appear in H.R. 7230 and S. 2718. There are no inconsistencies or difficulties about that. I think we can leave it to staff to achieve a combination of those, unless members want to express a view at this point.

Mr. Bonker. Mr. Chairman, I would like to take this opportunity to emphasize that under (2), "the Department of Commerce also has the responsibility of facilitating the export of finished products."

That is an important consideration for this committee because many times we are faced with issues that involve the export of cowhide versus finished products, or ferrous scrap, an issue that the gentleman from Illinois has been involved in, or logs from my own area.

The Department of Commerce should emphasize the export of finished products, which is the true purpose of the legislation that I have sponsored, rather than the export of unprocessed resources. I want this to be stressed as an important element in our list of findings.

Mr. Bingham. Do you see it there now?

Mr. Bonker. Presently it is on page 25 of the print, under the bill H.R. 7230, line 21. There is nothing that needs to be changed. You invited us to comment on anything involved in the findings and I just wanted to emphasize that point.

Mr. Bingham. Well, at this particular moment we were looking at the findings to title I, which we had previously passed over. I think the gentleman is referring to the findings in title II.

Mr. Bonker. That is true. We have in effect two sets of findings.

Mr. Bingham. Correct. Now, if there is no objection to the proposal that the staff combine the statement of findings on pages 2 and 3 of the comparative print, we can proceed then to title II.

Mr. Findley. Mr. Chairman.

Mr. Bingham. Mr. Findley.

Mr. Findley. Is this the last word on the findings section?

Mr. Bingham. We will not come back to that unless someone wants to raise a point.

Mr. Findley. If I could be recognized to make a few observations. This is what is sometimes described as "editorial language" in the bill, and editorial language sometimes gets us into trouble.

For example, section 102(a)(2) of S. 2718 could be read by a private, that is, a capital stock firm, as asserting that there are some places where a producer-owned export trading company can do a better job than one that is not producer owned. I am not sure that that is true.

I think there is a place for producer-owned enterprises. I think they are an effective competitor in many cases. Why do we pass judgment on a question like that?

Then, under finding No. 6, are we saying State and local governmental activities? Is that how we wound up?

Mr. BINGHAM. What page?

Mr. FINDLEY. Well, finding No. 6, State and local governmental activities, or whatever it says, are an important and irreplaceable source for expansion of exports. That is a pretty sweeping declaration too.

Why do we need to make a point like that?

I would suggest that in the revision process some adjustment of language occur. If we feel we have to deal with these topics, though, why pass sweeping judgments like that which we really would have great difficulty supporting if we were challenged to do so?

I guess all of this is to say that I think these editorial introductions to bills often create problems and do very little good.

Mr. BINGHAM. I will ask Mr. Bonker to respond to the question about No. 2. I notice that is the same as No. 4 in H.R. 7230.

Mr. FINDLEY. I am not at all opposed to producer-owned trading. I think that it is a good idea, but I do not think we can just jump to the conclusion that there are places where only a producer-owned trading company can do a good job. I think the less we say in the findings the better, frankly.

Mr. BINGHAM. I am inclined to agree with the gentleman. They do not really accomplish very much. They sometimes make people who are interested in the legislation happy, but they can cause trouble.

Mr. FINDLEY. Maybe we could extract some of those thoughts and put them in the report and make people happy that way.

Mr. BONKER. If I may respond to the gentleman from Illinois. I have no pride of authorship on the provision which relates to producer-owned export trading companies. That comes from the Senate language and I have no objection to removing it, and then we can discuss it further in conference.

I think the gentleman raises an important point on finding No. 6 relating to State and local and other governmental authorities and I would not have any problem with removal of the phrase, "are an important and irreplaceable source for expansion." We could say, "may be a necessary source for expansion."

Mr. FINDLEY. Or "can be an important source."

Mr. BONKER. That would be fine. If you want to offer that as an amendment I would have no objection to it.

Mr. FINDLEY. I would move that line 6 read, "services can be an important source for."

Mr. BINGHAM. Is there objection to the amendment? If not, the amendment is agreed to.

I understand that the inclusion of some language like this is considered very desirable on the part of some of the State and local government people, particularly if we are going to eliminate section 5.

If the members have any other language that they feel should not be in the findings, I suggest they communicate that to the staff. In most cases there is no necessity of including all of that language.

Can we go back now to title II of S. 2718 on page 23? Again, I would suggest that the staff be authorized to combine the findings as

they appear in the comparative print, in this case from the two Ho
bills.

WEBB-POMERENE ACT PROVISIONS

That would take us up through page 25. Now, starting with pa
26, I suggest that we look at the Senate language in S. 2718. Th
provisions have to do with the Webb-Pomerene associations and wit
the expansion of Webb-Pomerene to cover the export of services. I
would cover export trading companies.

The Senate language does expand Webb-Pomerene coverage to i
clude export of services. It rewrites the Webb-Pomerene Act's criteri
for antitrust exemptions, provides a certification procedure for anti
trust immunity, transfers the administration of the act from the Fe
eral Trade Commission to the Department of Commerce, provides
role for the Department of Justice and the Federal Trade Commissi
for certification and enforcement, creates an office in Commerce t
promote the formation of export trade associations and export tradin
companies, and provides for a task force to evaluate the effectivene
of the act and to make recommendations for future changes.

Before I go further, I want to say that these sections, of course, wi
have to be reviewed by the Committee on the Judiciary, which ha
primary jurisdiction in this area, but again it seems to me that w
should offer our views in the form of a bill that follows substantiall
the language of the Senate bill.

The reason I think the Senate bill is somewhat preferable to H.R
7230 is that the Senate bill does speak to the need of trading companie
and trade associations for increased certainty as to what is and is no
permissible under the act.

Under the Senate language, they would be able to engage in specifi
activities without fear of prosecution under the antitrust laws. Th
Senate language provides immunity from the application of the anti
trust laws for specified activities, provided that: the activities are de
termined not to be in violation of specified antitrust standards; there
is an established need for the immunity; and the association or com
panies successfully complete the required certification process.

This meets the complaint that we heard in the testimony that, as i
stands, Webb-Pomerene has not been as helpful as it should have been
because it does not provide any advance assurance to those that wis
to take advantage of it that they are acting within the law. They have
to take their chances and rely on the advice of lawyers.

Now, we did encounter testimony from two existing Webb-Pomerene
associations who are operating quite contentedly under that act, and
do not want their situation jeopardized and changed unnecessarily.
I will have some amendments to propose, both to simplify the proces
of certification and to meet the objections of the existing Webb-Pomerene associations. I suggest that, if there is no objection, we us
the Senate bill as the markup vehicle for this purpose. And, as I say,
I will let it be subject to such amendments as the members care to offer.

We are in a peculiar situation here in that those few associations
that are operating under Webb-Pomerene do not want to be disturbed.
They are quite happy the way it is. But that procedure has not proven
widely practical for many smaller operations that are fearful that they
will get in trouble because they cannot get advance approval of what
they want to do. So we have to try and take care of both categories.

Are there amendments, then, to title II starting on page 26? Yes, Mr. Bonker.

Mr. BONKER. Are you moving at this time for the committee to adopt Senate provisions which relate to expansion of Webb-Pomerene?

Mr. BINGHAM. Yes. Well, first, to do it in an orderly fashion, we should adopt section 202(b) of S. 2718 at the top of page 26. If there are no amendments to that, we will proceed to section 203 of S. 2718 on page 26, Definitions.

[The amendment referred to follows:]

(b) PURPOSE.—It is the purpose of this Act to encourage American exports by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commision to the Secretary of Commerce.

DEFINITIONS

SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out the first section (15 U.S.C. 61) and inserting in lieu thereof the following:

"SECTION 1. DEFINITIONS.

"As used in this Act—

"(1) EXPORT TRADE.—The term 'export trade' means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported from the United States or any territory thereof to any foreign nation.

"(2) SERVICE.—The term 'service' means intangible economic output, including, but not limited to—

"(A) business, repair, and amusement services;

"(B) management, legal, engineering, architectural, and other professional services; and

"(C) financial, insurance, transportation, and communication services.

"(3) EXPORT TRADE ACTIVITIES.—The term 'export trade activities' includes activities or agreements in the course of export trade.

"(4) TRADE WITHIN THE UNITED STATES.—The term 'trade within the United States' whenever used in this Act means trade or commerce among the several States or in any territory of the United States, or in the District of Columbia, or between any such territory and another, or between any such territory or territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

"(5) ASSOCIATION.—The term 'association' means any combination, by contract or other arrangement, of pesons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any State or of the United States, or corporations which are created under and exist pursuant to the laws of any State or of the United States.

"(6) EXPORT TRADING COMPANY.—The term 'export trading company' means an export trading company as defined in section 103(5) of the Export Trading Company Act of 1980.

"(7) ANTITRUST LAWS.—The term 'antitrust laws' means the antitrust laws defined in the first section of the Clayton Act (15 U.S.C. 12) and section 4 of the Federal Trade Commission Act (15 U.S.C. 44), and any State antitrust or unfair competition law.

"(8) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

"(9) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(10) COMMISSION.—The term 'Commission' means the Federal Trade Commission.".

Mr. BONKER. Let me inquire of the chairman: On page 26, line 1, Purpose, you say the purpose of the act is "to encourage American exports by establishing an office within the Department" to encourage and promote export trade associations.

On page 7 of the comparative print, under H.R. 7230, we have a provision under section 4,

> The Secretary shall promote and encourage the formation and operation of export trading companies by providing information and advice to interested persons. The Secretary shall provide a referral service to facilitate contact between producers of exportable goods and services and concerns offering export trade services.

Now, the provision that you are adding actually establishes an office. The provision in 7230 says that this function shall be in the Office of the Secretary, or maybe the Secretary as an institution shall promote.

My only question is, Are these provisions compatible?

I think that we ought to have an office established, as you are suggesting, but I did not know how that would interrelate with the functions of the Secretary that are identified in H.R. 7230.

Mr. BINGHAM. Is there any reason why we cannot combine the language of H.R. 7230 with the comparable provision of S. 2718?

Mr. BONKER. Mr. Chairman, carrying on with the spirit of Mr. Findley that we ought to reduce the language wherever possible, and we have three different references to this one subject of establishing an office, I think it could be open to misinterpretation by the Department if we are not more efficient in our use of language.

Mr. BINGHAM. If we are to have a section on purpose at all, it must be broader than what appears in H.R. 7230, because that does not include any reference to Webb-Pomerene at all.

Mr. BONKER. Mr. Chairman, perhaps the staff could work out the language so that we do not have duplication.

Mr. BINGHAM. I think that can be done, particularly after we have dealt with the substantive sections of the bill. The staff can then come back and look at this statement of purpose. The way it is stated in H.R. 7230 now, though, simply is not broad enough.

If that is agreeable, we will go on then to section 203 of S. 2718, Definitions. If there are no amendments to section 203, we will go to section 204, again under the Senate bill.

[The amendment referred to follows:]

ANTITRUST EXEMPTION

SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out section 2 (15 U.S.C. 62) and inserting in lieu thereof the following:

"SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

"(a) ELIGIBILITY.—The export trade, export trade activities, and methods of operation of any association, entered into for the sole purpose of engaging in export trade, and engaged in or proposed to be engaged in such export trade, and the export trade and methods of operation of any export trading company, that—

"(1) serve to preserve or promote export trade;

"(2) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of such association;

"(3) do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association;

"(4) do not constitute unfair methods of competition against competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association;

"(5) do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or export trading company or its members; and

"(6) do not constitute trade or commerce in the licensing of patents, technology, trademarks, or knowhow, except as incidental to the sale of the goods, wares, merchandise, or services exported by the association or export trading company or its members

shall, when certified according to the procedures set forth in this Act, be eligible for the exemption provided in subsection (b).

"(b) EXEMPTION.—An association or an export trading company and its members with respect to its export trade, export trade activities and methods of operation are exempt from the operation of the antitrust laws as relates to their respective export trade, export trade activities or methods of operation that are specified in a certificate issued according to the procedures set forth in the Act, carried out in conformity with the provisions, terms, and conditions prescribed in such certificate and engaged in during the period in which such certificate is in effect. The subsequent revocation or invalidation of such certificate shall not render the association or its members or an export trading company or its members, liable under the antitrust laws for such trade, export trade activities, or methods of operation engaged in during such period.

"(c) DISAGREEMENT OF ATTORNEY GENERAL OR COMMISSION.—Whenever, pursuant to section 4(b)(1) of this Act, the Attorney General or Commission has formally advised the Secretary of disagreement with his determination to issue a proposed certificate, and the Secretary has nonetheless issued such proposed certificate or an amended certificate, the exemption provided by this section shall not be effective until thirty days after the issuance of such certificate.".

Mr. BINGHAM. I do have an amendment that applies to several parts of that. I would like that amendment circulated, please. If there is no objection, I would like to have these amendments considered en bloc. They do cover more than section 204.

[The amendment referred to follows:]

Page 35, strike out lines 1 through 6 and redesignate paragraph (7) as paragraph (6).

Page 35, strike out lines 21 through 24 and redesignate paragraph (9) as paragraph (7).

Page 37, line 2, strike out "and" and all that follows through line 5 and insert in lieu thereof a period.

Page 37, line 13, strike out "The Attorney General" and all that follows through page 38, line 15.

Page 29, strike out line 12 and all that follows through line 8 on page 31 and insert in lieu thereof the following:

"(a) ELIGIBILITY.—Any association entered into for the sole purpose of engaging in export trade and actually engaged or proposed to be engaged solely in such export trade and the export trade activities and methods of operation of such association, and the export trade and methods of operation of any export trading company, shall, when such association or export trading company is certified in accordance with the procedures set forth in this Act, be eligible for the exemption provided in subsection (b), if—

"(1) such association or its export trade, export trade activities, or methods of operation, or the export trade, export trade activities, or methods of operation of such export trading company are not in restraint of trade within the United States and are not in restraint of the export trade of any domestic competitor of such association or export trading company; and

"(2) such association or export trading company does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities or services of the class exported by such association or export trading company, or which substantially lessens competition within the United States or otherwise restrains trade in the United States.

Mr. BINGHAM. The amendment refers first to pages 35 and 37 and then it refers to page 29. Let me explain what this amendment does. This is an effort to meet some of the problems raised during our hearings with the language of the Senate bill. The amendment would eliminate some of the information required to be provided in an application for certification, would simplify the certification procedure, and would restore the existing eligibility requirements of Webb-Pomerene.

As I say, this is in response to the testimony of existing Webb-Pomerene associations that the bill would be more burdensome on them than the existing act, which we did not intend.

Specifically, the amendment does three things: On page 35 it deletes paragraphs 6 and 8 from the list of information required to be provided in an application for certification.

Paragraph 6 would require the applicant to demonstrate that the activities for which it is seeking certification will serve a specified need in promoting exports. The existing associations argue that this requirement is unnecessary since they would not apply unless they felt certification would help their export sales. They also argue that this provision causes uncertainty instead of certainty, because if the specific conditions they cite to demonstrate the specified need change in the future, it would call their certification into question.

Paragraph 8 requires the applicant to list all countries to which it proposes to export. Again, this seems unnecessary and unduly restrictive in view of changing circumstances.

So that is one change, to eliminate those paragraphs, 6 and 8, from the items required.

On page 37 the amendment makes a conforming change to that one by placing a period after "Act" in line 2, thereby removing the reference to specified need. In effect, this part of the amendment eliminates a great deal of the new information that would be required by the bill that is not required by the Webb-Pomerene Act, while still requiring all the information really necessary for certification.

Then starting on page 37, line 13, through the end of that paragraph on page 38, the amendment deletes all the procedural requirements for participation by the Attorney General and the Federal Trade Commission in certification decisions. They are complicated and difficult to understand, and it seems enough to simply require that the Secretary make his determination within 90 days, after consultaion with the Attorney General and the FTC. This preserves their role, and it seems to avoid the complexity and administrative detail of the present bill.

Third, on pages 29 to 31, the amendment strikes out the Senate bill's eligibility requirements and replaces them with requirements identical to those contained in the current law. Although the Senate report claims that the bill expands and clarifies the antitrust exemption, the existing associations read the Senate's eligibility requirements as arguably doing just the opposite, and I tend to share their concern.

For example, the requirement that the activities serve to preserve or promote export trade is new. More important, the wording of some of the other requirements has been changed slightly from existing law so as possibly to remove the element of intent. If further analysis shows that the Senate language is advisable, it could be accepted in conference. But we will have greater flexibility if we preserve the existing requirements for now. And since it is not our intent to narrow the requirements, we should not adopt language that might do so.

Is there discussion of those amendments? If not, is there objection to the amendments? If not, we will consider them adopted.

That takes us all the way up to page 44, section 8 of the Senate bill, and also section 11 of H.R. 5061, the subject being automatic certification for existing associations.

The existing associations were not content wtih that, and therefore I am offering an amendment to that language which strikes section 8—everything from page 44, line 20, to page 45, line 5—and substitutes the language in the amendment headed, "Continuing Exemption for Existing Associations; Automatic Certification." This would go on page 49.

[The amendment referred to follows:]

Page 44, strike out line 20 and all that follows through line 5 on page 45 and redesignate subsequent sections accordingly.

Pages 49, insert the following after line 3:

"CONTINUING EXEMPTION FOR EXISTING ASSOCIATIONS; AUTOMATIC CERTIFICATION

"SEC. 207. (a) Application of the antitrust laws to (1) any association which is engaged solely in export trade and which is in compliance with section 5 of the Webb-Pomerene Act as in effect immediately before the date of enactment of this Act, and (2) the export trade, export trade activities, and methods of operation of such association, shall continue to be governed by the provisions of the Webb-Pomerene Act as in effect immediately before the date of enactment of this Act, except that in lieu of filing the written statements with the Federal Trade Commission required by section 5 of the Webb-Pomerene Act as in effect immediately before the date of enactment of this Act, such association shall submit annual reports to the Secretary of Commerce pursuant to section 6 of the Webb-Pomerene Act, as amended by this Act.

"(b) Any association to which subsection (a) applies shall be deemed to be certified under section 8 of the Webb-Pomerene Act as of the date of enactment of this Act if such association, within 180 days after such date of enactment, files an application for certification with the Secretary of Commerce containing the information set forth in section 4(a) of the Webb-Pomerene Act.

"(c) For purposes of this section, the term 'association', 'export trade', and 'export trade activities' have the meanings given such terms in section 1 of the Webb-Pomerene Act, as amended by this Act.".

Mr. BINGHAM. This amendment looks complicated but it really is not complicated. It says that the associations can continue as they are without change in their method of procedure or, if they wish to be certified, that they will be certified automatically.

They have made two arguments to us. First, they do not want to face uncertainty as to whether they will be certified under the new act. Second, if they are certified they do not want to face uncertainty as to whether the activities they have been conducting under the existing act will be permissible under the new act.

I think they are entitled to be assured that they are going to be. We do not want them opposing the bill, and they are entitled to feel that they are going to be at least as well off under the new act, possibly better off.

Mr. Bonker.

Mr. BONKER. Mr. Chairman, this has the effect of grandfathering trade associations that are now allowed to exist under Webb-Pomerene.

Mr. BINGHAM. That is right.

Mr. BONKER. It also, by passage of this bill, sets up a new certification procedure. So we are in effect allowing to exist two sets of procedures. One is under the existing law where a trade association would go to both the FTC and the Justice Department and be certified in that manner. This new procedure would allow the formation of a trading company by petitioning the Department of Commerce, who in turn consults with the Department of Justice and the FTC.

It would seem to me that we have streamlined the procedure. We have expanded and liberalized Webb-Pomerene. It seems that trade associations would have greater benefits, greater opportunity, better guarantees against antitrust legislation under the provisions of this new law than exists under the old law. So I am wondering is it necessary to maintain two sets of certification procedures? One set of certification procedures under the new act and one under the old system?

Mr. BINGHAM. If they wish the kind of certainty that is provided under the new law they can apply for certification. So we are giving them that option.

It is indicated under (a) here that if they do not want to do that they just continue as they are. In other words, they are grandfathered in their present posture, except that they will submit their reports to the Secretary of Commerce instead of to the Federal Trade Commission. That would be the only change.

Mr. BONKER. The Department of Commerce then becomes the lead agency?

Mr. BINGHAM. That is correct.

Mr. BONKER. But still, they would be entitled to the provisions, or legal precedence, under the old system?

Mr. BINGHAM. That is right. I must say that I can see the Committee on the Judiciary raising a question about this. They have been operating under the supervision of the Federal Trade Commission, and we are now saying in effect they can continue that same type of operation under the supervision of the Department of Commerce, and the Committee on the Judiciary may not be altogether satisfied with that.

I prefer at this point at least to give them the benefit of what we consider to be the more export-oriented agency—namely, the Department of Commerce—to operate under.

Mr. BONKER. Mr. Chairman, since I am not an attorney, I will defer to my colleagues on the Judiciary Committee to work out this one.

Mr. BINGHAM. I am reminded that on the point I just made, that in any case, under the existing procedures, the Federal Trade Commission and the Department of Justice are the enforcement agencies. So it would still be under their jurisdiction for that purpose.

Mr. BONKER. Mr. Chairman, there is another point that should be clarified that does not relate directly to the amendment. Under Webb-Pomerene, we have trade associations. Under the provisions of this bill, if enacted, we will have the formation of trading companies.

If a trade association under Webb-Pomerene opts for certification and processing through the Department of Commerce under the provisions of this bill, then are they going to be known as trading companies or as trade associations or does it really matter how they are termed?

Mr. BINGHAM. This entire title deals with trade associations. So for this purpose, we are speaking of trade associations.

Mr. BONKER. But in H.R. 7230, it is identified as trading companies.

Mr. BINGHAM. At what point?

Mr. BONKER. There are three or four titles you can pick and choose. Maybe this is something the staff can work out. In H.R. 7230, we do refer to trading companies.

Mr. BINGHAM. I am not sure I understand the gentleman's point.

Mr. MAJAK. Mr. Chairman, the Senate language, as well as H.R. 7230, makes trading companies, as we have now created them in title I of the bill, eligible for antitrust exemptions under the Webb-Pomerene arrangement. Trade associations are also, of course, eligible for that antitrust treatment.

So, in effect, both would exist and both would have the same antitrust advantages. They would still be distinguishable, one being associations and the other being private companies.

Mr. BONKER. Let's take a scenario. Let's take a trade association that is now formed under Webb-Pomerene. It chooses to opt for the certification provisions under H.R. 7230 and they so apply to the Department of Commerce. At that point, do they become a trading company or do they remain a trade association?

Mr. MAJAK. They would continue to be a trade association as defined under Webb-Pomerene.

Mr. BONKER. I really do not see much distinction.

Mr. MAJAK. There is not much distinction in fact, but they would continue to be known as associations. A private export trading company similarly could be known as a trading company, if it so desired. In practice, there is not a great deal of difference between the two.

Mr. BINGHAM. May I call the attention of the gentleman to the section on "eligibility," on page 29, which I think is a key section. That refers to "association," and then it refers to "the export trade and methods of operation of any export trading company."

So it is clear that it covers both those that consider themselves associations, as do existing Webb-Pomerene associations, and export trading companies established for that purpose.

Mr. BONKER. The chairman makes a valid point and it clarifies that, but that section has now been removed through the chairman's amendment.

Mr. BINGHAM. The gentleman is quite right, but the amendment still refers to export trading companies as well as associations.

Mr. BONKER. I would like to advise the chairman that I have given up on this exercise and wish to move on to the next one.

Mr. BINGHAM. Can we turn now to section 9 of the Senate bill on page 45 of the print, "Confidentiality of Application and Annual Report Information." Here I propose a simple amendment, if that can be circulated.

[The amendment referred to follows:]

Page 46, insert the following after line 13:

"(c) DISCLOSURE TO CONGRESS.—Nothing in this section shall be construed to authorize the withholding of information from the Congress, and all information obtained under this Act shall be made available upon request to any committee or subcommittee of Congress of appropriate jurisdiction.

Mr. BINGHAM. This would follow the provisions of the Export Administration Act to make it clear that the confidentiality provisions do not authorize withholding of information from Congress.

Is there objection to that amendment, or are there other amendments to that section? If not, that section is adopted as amended.

That takes us up to page 48, section 7 of 7230, task force study. Are there any amendments to that section? If not, that section is agreed to.

TAX PROVISIONS

We now come to title III, and I want to again make a few comments as to why I believe it would be in order for us to accept the tax provisions of title III of the Senate bill, which start on page 49 and run through page 51, line 22.

[The amendment referred to follows:]

TITLE III—TAXATION OF EXPORT TRADING COMPANIES

APPLICATION OF DISC RULES TO EXPORT TRADING COMPANIES

SEC. 301. (a) Paragraph (3) of section 992(d) of the Internal Revenue Code of 1954 (relating to ineligible corporations) is amended by inserting before the comma at the end thereof the following: "(other than a financial institution which is a banking organization as defined in section 105(a)(1) of the Export Trading Company Act of 1980 investing in the voting stock of an export trading company (as defined in section 103(5) of the Export Trading Act of 1980) in accordance with the provisions of section 105 of such Act)".

(b) Paragraph (1) of section 993(a) of the Internal Revenue Code of 1954 (relating to qualified export receipts of a DISC) is amended—

(1) by striking out "and" at the end of subparagraph (G),

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "and", and

(3) by adding at the end thereof the following new subparagraph:

"(I) in the case of a DISC which is an export trading company (as defined in section 103(5) of the Export Trading Company Act of 1980), or which is a subsidiary of such a company, gross receipts from the export of services produced in the United States (as defined in section 103(3) of such Act) or from export trade services (as defined in section 103(4) of such Act).".

(c) The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall develop, prepare, and distribute to interested parties, including potential exporters, information concerning the manner in which an export trading company can utilize the provisions of part IV of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to domestic international sales corporations), and any advantages or disadvantages which may reasonably be expected from the election of DISC status or the establishment of a subsidiary corporation which is a DISC.

(d) The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1980.

SUBCHAPTER S STATUS FOR EXPORT TRADING COMPANIES

SEC. 302. (a) Paragraph (2) of section 1371(a) of the Internal Revenue Code of 1954 (relating to the definition of a small business corporation) is amended by inserting ", except in the case of the shareholders of an export trading company (as defined in section 103(5) of the Export Trading Company Act of 1980) if such shareholders are otherwise small business corporations for the purpose of this subchapter," after "shareholder".

(b) The first sentence of section 1372(e)(4) of such Code (relating to foreign income) is amended by inserting ", other than an export trading company," after "small business corporation".

(c) The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1980.

Mr. BINGHAM. I think we should make clear in the report that we are not taking any position on the issue of DISC or subchapter S benefits as such. Our reasons for including this language would be, first, to induce the Ways and Means Committee to act on this subject. If we do not report any tax language from the committee, the desirability of these tax benefits for export trading companies will not be considered.

Second, as far as DISC is concerned, it is controversial and I have some doubts about its desirability myself, but it makes no sense to have DISC and not allow export trading companies to use it. In other words, no matter whether one favors or opposes DISC, as a matter of consistency and equity it should not be denied to export trading companies as long as it exists.

In order to avoid any problems with the Budget Act, I would propose that we adopt this language with an amendment delaying the effective date of the tax provisions until 1982.

So I would move that we adopt the provisions of the Senate bill on that subject, with an amendment striking out "1980" in line 5 and line 22 on page 51 and inserting in lieu thereof "1981". Is there discussion? Yes, Mr. Bonker.

Mr. **Bonker**. Mr. Chairman, I support the addition of this section and feel as you do, that we need to extend the Domestic International Sales Corporation tax provision if we want to see the formation of these trading companies.

I have asked my staff to look into the possibility of amending that provision, if it is appropriate, on the floor to see that the tax provision or benefit applies to the export of manufactured goods. I think it is important to keep the distinction that in allowing the formation of these trading companies we want to stimulate the export of our manufactured goods and promote competition in the world market for the export of our finished products. If the effect of this legislation is to allow companies to form in order to export our raw resources then we are denying ourselves the full range of economic benefits that go with exporting.

Applying a provision to the DISC tax section that would extend the application of that DISC tax to the export of finished products, I think would be a positive feature in this legislation.

Mr. **Bingham**. Is there further discussion, or are there any amendments to that section? If not, that stands approved.

I would like to say that I think our staff deserves high commendation for remarkable preparation for our consideration of this bill.

Mr. **Gilman**. Before we close up the observations, I would like to express my concern, along with that of my colleague, Mr. Lagomarsino, with regard to the inclusion of a special role for the financial and banking institutions, as part of this measure.

While we would not vote in opposition to this proposal at this point, we both have reservations about the dominant role that such institutions may play in export trading companies and reserve the opportunity to express those opinions on the floor.

Mr. **Bingham**. Thank you. If there is no further discussion I will entertain a motion that the bill be reported favorably to the full committee.

Mr. **Majak**. Mr. Chairman, the staff will need a couple of days to put a print together. The members may wish to review that print in detail before taking final action.

Mr. **Bingham**. I think we can have another meeting for the formal reporting out.

Mr. **Majak**. We might meet just prior to the full committee meeting, which is now scheduled for Tuesday morning. We will have the print to members' offices by Friday for review.

Mr. **Bingham**. Very good. Thank you all for coming. The subcommittee stands adjourned.

[Whereupon, at 3:30 p.m., the subcommittee was adjourned to reconvene at the call of the Chair.]

EXPORT TRADING COMPANIES

TUESDAY, JUNE 24, 1980

House of Representatives,
Committee on Foreign Affairs,
Washington, D.C.

The committee met at 10:10 a.m. in room 2172, Rayburn House Office Building, Hon. Clement J. Zablocki (chairman) presiding.

Chairman Zablocki. The committee will please come to order.

We are meeting today for a hearing on H.R. 7230, the export trading companies legislation.

Our witnesses this morning are the Honorable Philip M. Klutznick, Secretary of Commerce, and Ambassador Reubin Askew, U.S. Trade Representative.

This is the first appearance before this committee of both gentlemen as head of their respective agencies. We are pleased to have this opportunity to hear from you and to welcome you before the committee. We hope to see much of you in the future.

Unless you have a preference, I would call on Secretary Klutznick to make the first statement as head of the Department which has been primarily responsible for the export trading companies legislation, and then Ambassador Askew. We will then open the meeting to questions from members of the committee.

Mr. Secretary, if you will begin, please.

STATEMENT OF HON. PHILIP M. KLUTZNICK, SECRETARY OF COMMERCE

Secretary Klutznick. Mr. Chairman and members of the committee, I am exceedingly grateful for your kindness in welcoming me and my friend and colleague, Ambassador Askew, in our first appearance here.

I guess we are both hopeful it will not be our last appearance before this august body.

I am pleased this morning to make this appearance before your committee to present the administration's views on legislation to authorize the formation and operation of export trading companies. H.R. 7230 seeks to encourage exports of goods and services by American industries by promoting the formation of export trading companies.

The administration strongly supports the purpose of this bill. The administration endorses the concept of export trading companies and changes in the Webb-Pomerene Act to clarify the application of the antitrust laws to export trade activities. An increase in exports is of utmost importance to the Nation's economic well-being, and this legislation will provide an effective incentive for increasing our exports.

This legislative session, Mr. Chairman and members of the committee, already grows short. If we are to have this vehicle for facilitating our exports, we must act quickly, and I urge this committee and the House to do so.

THE ROLE OF EXPORTS IN A STRONG U.S. ECONOMY

In 1960 the United States had an 18-percent share of world exports of manufactures. By 1970 this share had dropped to 15.4 percent. During the 1970's this share dropped further before edging upward again toward the end of the decade. In recent years we have seen some of the effects of this decreased competitiveness of U.S. exports.

Export performance is increasingly important to the U.S. economy and must be improved. Exports: (1) Contribute significantly to U.S. jobs, production, and economic growth; (2) enable important economies of scale, thereby contributing to the most efficient use of U.S. resources and to lower prices; and (3) provide the most constructive way of paying for U.S. imports of petroleum and other essential commodities, and thus keep the dollar firm.

Enormous as our oil bill is, we could be paying for imported oil without running a balance of trade deficit if we had maintained the share of world exports in manufactured goods that we enjoyed in 1960. The postwar growth of Japan and our European allies, welcome as it has been, has given the United States stiff competition. So too, the newly industrializing countries have become important exporters of some manufactured goods. Yet, the strengths of other countries do not tell the whole story. Another factor is the traditional disinterest of most American companies in exporting.

We do not have precise figures on the makeup of the U.S. exporting community. There are between 250,000 and 300,000 manufacturing firms in the United States of which roughly 25,000 to 30,000 export. Ninety-five percent of all manufacturing firms are small or medium sized—that is, have fewer than 1,000 employees. Of these, comparatively few actually do any exporting. Collectively, these companies provide at most 10 to 15 percent of our export total.

Exports of goods presently account for about 7½ percent of our gross national product, the lowest percentage of any industrialized nation. Compare this figure with that of France, 16.7 percent; or Germany, 22.6 percent; or Italy, 22.3 percent; or the Netherlands, 38.3 percent; or the United Kingdom, 23.1 percent. Even Japan, who has no agricultural exports, exports 10.2 percent.

Of course, our economy has been and is quite different from the economies of these countries. Yet if U.S. exports of goods and services were to increase by only 1 percentage point of our gross national product, that would represent nearly $3 billion. This is a significant portion of our merchandise trade deficit.

THE ROLE OF EXPORT TRADING COMPANIES

Mr. Chairman, let me now discuss how export trading companies can help us toward this growth.

Faced with a large domestic market, most small- and medium-sized companies have little incentive to export. What incentive they may have is further diminished by their lack of know-how, management time, and financial resources. Exporting may seem too much of a management burden, too costly, and too risky for the uncertain return it promises.

The solution for the nonexporting American company is a partner that will take a quality manufactured product and itself do the exporting. We should learn from the experience of many of our most successful trading partners, including West Germany, Japan, France, and Hong Kong. All use some form of a sophisticated export trading entity to represent manufacturers abroad. They may also promote consortia of companies to undertake large overseas projects, with their attendant large risks.

Aside from the major international grain companies, we do not have large export trading entities. To be sure, there are some 700 to 800 export management companies in the United States, many of them well-managed and successful businesses. Most are quite small, however, and cannot provide the full range of export services required by the novice exporter.

We also have about 30 Webb-Pomerene export associations, handling U.S. exports ranging from movie and TV films to textile machinery. Most of these Webb-Pomerene associations export bulk commodities such as sulfur, fertilizer, agricultural products, and forest products.

I believe there are three characteristics that are essential for a successful U.S. export trading company. First, it must provide a one-stop facility for firms of any size interested in exporting. It must provide market analysis, distribution services, documentation, transportation arrangements, financing, and after-sale services abroad. In performing these services, the export trading company will develop a thorough knowledge of the laws and customs of the foreign markets in which it sells. As exporting specialists, of course, these companies will achieve economies of scale beyond those an individual company could hope to achieve.

Second, a successful export trading company will seek out U.S. products for which it has discovered markets overseas. It will not stand by passively, awaiting overtures from U.S. companies interested in exporting their products.

Third, the export trading company should limit the capital outlay and risk that any individual company would have to assume to capitalize, to allow operations on a scale that will achieve the economies mentioned earlier.

Export trading companies with these characteristics are most likely to be formed by entities that already operate in international markets and that have sufficient capital available. A manufacturer that exports its own products may use its overseas network to sell products of smaller U.S. companies that will not export on their own.

No matter what the origins or ownership of the export trading company, its aim will remain the same: To export products of U.S. companies that do not now export in significant quantities.

THE NEED FOR LEGISLATION

If export trading companies have this potential, why has the private sector not already seized upon the opportunity, formed them and equipped them with know-how and financial backing?

The answer may lie largely in the inhibiting effect of some of o regulatory mechanisms. With the exception of bank holding compani which can purchase up to 5 percent of the shares of any U.S. compan our banking laws and regulations do not allow bank investments export trading companies. On the other hand, foreign banks are eith sponsors of, or closely identified with, many of the successful expo trading companies in other countries. There is also uncertainty some segments of the business community over application of t antitrust laws to export activities associated with their domest competitors.

Mr. Chairman and members of the committee, I believe the tim has come to enact legislation removing the inhibiting effect of the regulatory schemes. We need legislation that provides flexibility the regulatory schemes to allow successful export trading compani while not undermining the banking and antitrust laws. The bankin provisions of H.R. 7230 reflect an appropriate accommodation of th export trade interests to be promoted by the legislation with importan safeguards.

We are also pleased the subcommittee has accepted the concept of certification procedure for granting antitrust exemptions. Howeve we remain convinced that the antitrust provisions of S. 2718, with th minor amendments we proposed to the subcommittee, are the appropriate balance between export enhancement and important competitive concerns.

ADMINISTRATION POSITIONS ON THE MAJOR PROVISIONS OF H.R. 7230

Let me briefly address the major provisions of the export trading company legislation.

First, because of their expertise and financial resources, banks ca play an important role in the successful development of export trading companies. The administration believes that H.R. 7230 adequately meets the concerns of safety and soundness for our financial system while permitting a leading role for bank participation in export trading companies.

Second, antitrust. The administration remains committed to the standards and procedures for an antitrust exemption contained in title II of S. 2718. This approach is the result of careful and prolonged consultation within the administration and between the administration and Congress. It strikes a careful balance between the need to provide businessmen with the certainty that their export trade activities will not lead to antitrust liability and the need to prevent anticompetitive developments within the United States.

Third, the administration approves using existing authorities such as those provided by the EDA and SBA to help export trading companies. The administration does not object to authorizing the Export-Import Bank to guarantee commercial loans to export trading companies secured by inventory or export accounts receivable.

Fourth, the tax provisions. The administration remains firmly opposed to modifications of the DISC and the subchapter S provisions of the Internal Revenue Code proposed in H.R. 7230. Most export trading companies should be able to meet the requirements of present DISC legislation. Thus, the creation of export trading companies will effectively expand DISC coverage without changing the statute itself.

However, extending DISC benefits to "services produced in the United States" and to "export trade services" would be costly. Present budgetary restrictions simply do not permit a revenue loss of that size at this time.

Mr. Chairman, even if Federal budgetary conditions were less stringent, we would have serious doubts about the scope of the proposed amendments. Many of our large service firms already have substantial international operations. These firms could incorporate export trading companies simply to qualify existing operations for DISC benefits. The result would be a substantial revenue loss without any demonstration that exports would be appreciably increased.

Finally, we are concerned that substantially enlarging the legal scope of the DISC program could raise questions about U.S. observance of our international obligations under the Multilateral Trade Negotiations Subsidies Code.

With respect to the subchapter S provisions, we support eliminating the present requirement that a qualifying corporation earn at least 20 percent of its income within the United States. We believe, however, that this and other reforms of subchapter S should be part of a broader reform of subchapter S.

To sum up, with the changes in the banking and antitrust provisions to which I alluded earlier, the administration urges the adoption of the banking, financing, and antitrust provisions of H.R. 7230. We also urge the deletion of the revenue provisions in this bill. Removal of these differences will allow the administration and congressional supporters to work together toward passage of export trading company legislation in 1980, which we hope will stimulate and extend our export trading in the year ahead.

Thank you.

Mr. BINGHAM [presiding]. Thank you very much, Mr. Secretary. Mr. Ambassador.

STATEMENT OF AMBASSADOR REUBIN O'D. ASKEW, U.S. TRADE REPRESENTATIVE

Ambassador ASKEW. Much of what is in my formal statement duplicates what Secretary Klutznick has already adequately covered in terms of the administration's position. With your permission, I would like to file the statement for the record and simply make a few remarks in terms of what I perceive is the urgency of export expansion in the United States.

Mr. BINGHAM. That will be fine. Your statement will be incorporated in the record in full without objection.

U.S. INTERNATIONAL TRADE POSITION

Ambassador ASKEW. After World War II, the United States held a predominant position in world trade. We believed that that was the way it was going to continue to be. We have come to appreciate now that that was an unnatural condition. I think, as Secretary Klutznick indicated, ours was an enlightened policy which helped to rebuild a strong Western Europe through the Marshall plan and which helped Japan's economy to recover as effectively as it has.

Times have now changed, and I think we need to understand that we have not particularly thought of ourselves as a trading nation. We have a huge domestic market. In 1969, we were talking about 4 percent of our GNP attributable to exports. Last year, we were up to about 8 percent, and hopefully it is going to continue to grow.

One of our big problems, I think, in Government is trying to relate our dependence on trade to the average man and woman in America. So much of the standard of living we enjoy can be continued only to the extent that we have a healthy growth in our economy. Unquestionably, one of the most important and constructive ways we can continue to grow and expand is through expanded exports.

We have developed competitors by our enlightened policies. That is essentially as it should be. Now we must recognize that the United States must approach the need to export in a much more active and aggressive way than we have ever done before.

A lot of our so-called export disincentives have come about for very valid reasons. We are at a point now, however, where we are going to have to consider an overall picture, beyond the individual merits of any one decision, regarding what is happening to our country in terms of its ability to permit its business people to compete on even terms in the world marketplace.

WEBB-POMERENE ASSOCIATIONS

We do not submit that trading companies in and of themselves are a panacea. I don't think anyone is saying that.

The lack of utilization of Webb-Pomerene associations is obvious. They originally accounted for about 19 percent of our exports in the 1930's. Now some 33 Webb-Pomerene associations account for less than 2 percent of our exports.

I don't think it serves any useful purpose to try to determine whether or not businesses should have utilized Webb-Pomerene associations to a greater degree than they have. The fact is they perceive them not to have the certainty they should have in the antitrust area. So if that is the perception, it is a situation which is real enough that we should clear it up. There is no reason now that we should not look at the real world and determine how important, for example, banking services have been in connection with trading companies worldwide.

We are not trying to model trading companies after any other country in the world. We need to adapt this concept as best we can in an American way that serves our purpose. Allowing trading companies to cover services is, however, critically important.

We need to clear up the antitrust uncertainty by letting businesses have some certainty as to what they can anticipate in the antitrust area. We need to give trading companies more flexibility to utilize all of the various services to help businesses get into exports.

There are many estimates, as the Department of Commerce has indicated, of how few of our many companies which are in a position to export actually compete in world markets. They might enter these markets through trading companies which do not require them to assume all of the risk or all of the expense of the individual services that are important to a successful export venture.

LEGISLATION WOULD PROMOTE EXPORTS

The Department of Commerce, within the existing law, has worked very hard to try to encourage export performance. Now we have the opportunity of passing in this session of Congress a major piece of trade legislation to give our business people more flexibility.

There are adequate safeguards written into the legislation. Actually, as the Secretary indicated, we would prefer the antitrust provisions of the Senate bill, mainly because we are at a point late in the session. Even with the best of intentions, the assertion of everyone's individual feelings in a piece of legislation often results in noble efforts, but legislation that is not passed.

What this Government needs to do is send some kind of clear signal to the business community that government will view its responsibility differently than it has before and to seek a partnership more than an adversarial relationship. I am hopeful this is not the only signal sent. Yet this may be the only piece of legislation available to send one of those clear signals.

With the safeguards on bank participation built into this bill, the antitrust provisions contained in the Senate bill which I am hopeful will be incorporated into the House version, and the changes Secretary Klutznick pointed out in the tax provisions, we have the basis for a workable bill.

What we really want to do and, I think, what the Congress wants to do is to encourage the business community to export. Producing legislation that will be helpful and which will send a signal to the business community along the lines we have been talking about is necessary in this session of the Congress.

From the standpoint of one who is charged with being the President's principal spokesman on trade, I want to tell you we simply have to do a better job in export. We are going to have to recognize, again as the Secretary stated, that all of the impediments placed on exports, often for valid reasons, are collectively making it very, very difficult for us to compete.

We will be addressing the broader question of export incentives and disincentives in terms of the section 1110 report required by the Trade Agreements Act.

Now pending is an important piece of legislation, and I urge your favorable consideration of it.

[Ambassador Askew's prepared statement follows:]

PREPARED STATEMENT OF AMBASSADOR REUBIN O'D. ASKEW, U.S. TRADE REPRESENTATIVE

The case for increased exports of American goods and services is clear and unassailable.

In 1980, the United States will pay more than $90 billion for imported oil. The high cost of oil imports is the principal cause of the continuing deficits we have recorded in our balance of trade in recent years.

In the first four months of 1980, as compared to the first four months of 1979, we reduced our consumption of imported oil by 13.8 percent. But during that same period this year, we paid 77 percent more for imported oil overall than we did last year. Thus, even with our recent successes in energy conservation, we have, because of inflation and because of repeated OPEC price increases, been unable to reduce our ever-rising oil bill. The result is a diminished dollar and a declining economy.

We could do a better job of paying this increasing oil bill without running such large trade deficits if we enjoyed a larger share of overall world trade. Once we were dominant in the world marketplace. We are still a very major economic force. But now we have many competitors for the world product.

In 1970, the Federal Republic of Germany replaced the United States as the world's leading exporter of manufactured goods. Today, Japan threatens to drop the United States into third place. At the same time, newly industrialising countries around the world have presented us with increasing competition from a new quarter, for these countries are also becoming exporters of manufactured goods.

In part, these developments are understandable. The years immediately following World War II were really an unnatural time for the world and a time in which unnatural conditions prevailed. The United States could not have legitimately expected to sustain our position of unequestioned preeminence in the world economy.

Japan and Western Europe were certain to rise in time from the ashes of war to regain their previous prominence as competitors for world markets. This resurgence was hastened by our own enlightened efforts to help them rebuild their economies as insurance against the spread of communism. Furthermore, once the chains of colonialism were removed from the nations of what we have since come to know as the third world, it was only a matter of time before their economies, too, began to develop to the point where they could compete effectively for a larger share of world markets.

Not all the reduction in the American share of world trade, however, can be traced to these historical developments. In truth, we must do a much better job of improving our competitiveness and promoting our exports. Some of our competitors apparently understand far better than we do the need to be diligent in pursuit of trading interests in our increasingly interdependent world economy.

At one time, foreign markets were of little consequence to the United States, principally due to the vast size of our domestic market. But now, as we all know, not even our domestic market is immune from foreign competition. And this makes the case for export promotion even more compelling.

Markets for our exports of goods and services now have become essential to the American economy. Exports account for one out of every eight U.S. manufacturing jobs, the production of one out of every three acres of American farm land, and, along with the international activities of American firms, almost $1 out of every $3 of U.S. corporate profits. About one-sixth of all we grow or make in America today is sold abroad.

Exports are essential to growth. U.S. manufactured exports expanded at nearly twice the rate of total U.S. production of manufactured goods between 1972 and 1978. Agricultural exports grew even faster—at three times the rate of growth in total U.S. farm production.

A healthy and expanding export sector is essential for the long-range stability of our external accounts and thus of the dollar. Exports are crucial to our efforts to diminish our continuing trade deficits. Exports are one of the most constructive ways to pay for imported oil and other products which the American economy demands and American consumers desire.

In addition, exports can help stimulate improved productivity, and they can help reduce prices in the American economy through greater economies of scale in production. In these and many other ways, a thriving export trade can help improve the competitiveness of our ailing economy and strengthen our position in world trade.

We are persuaded in the administration that one constructive means of facilitating increased exports of goods and services by American producers is through the development and use of export trading companies. The administration strongly supports the principle and purpose of the bill now before this committee which would allow the creation of such companies. We endorse the concept of export trading companies and changes in the Webb-Pomerene Act to clarify the application of the antitrust laws to export trade activities.

In my own view, the enactment of this one piece of legislation may well be the best hope we have this year of sending a positive signal to private enterprise that we are indeed serious about promoting American exports.

One significant reason why American exports have fallen short of our expectations is that the vast majority of American companies are simply not engaged in exporting. One hundred companies account for half of all U.S. exports. Two hundred companies account for 80 percent of our exports. The fact is, less than 10 percent of the 250,000 manufacturing firms in the United States export any of their goods to foreign countries. Yet economists in the Department of Commerce estimate that at least 10,000 and perhaps as many as 25,000 American firms are competitive enough—in terms of price, quality, and delivery schedules—to engage in exporting.

Most of these potential exporters are small and medium-sized businesses. These firms do not export now principally because they lack the financial resources and the knowhow to do so. They do not have the funds to invest in needed market development abroad or the time or personnel to master customs documents, shipping, packaging, marketing, and the myriad details involved in exporting. These companies often lack the incentive to export as well, simply because our domestic market is as large and as open as it is. For them, foreign markets are a forbidding terrain fraught with uncertainties. Unless we make exporting a more attractive and more feasible proposition for these firms, they are unlikely to expand their operations into overseas markets.

These companies need a partner capable of taking their products and doing the exporting for them. They need a means of spreading among many firms the risks and costs they cannot afford on an individual basis. In short, they need an export trading company.

This is precisely the approach adopted with great success by many of our trading partners, including west Germany, France, Japan, Korea, and Hong Kong. All use some form of a sophisticated export trading entity to represent their manufacturers abroad. Many of these countries also promote consortia of companies to undertake large overseas projects. Use of these consortia makes such ventures more practical and spreads the risks intrinsic to them.

Aside from the major international grain companies, we do not have large export trading entities in the United States. To be sure, there are between 700 and 800 export management companies in the United States, many of them well-managed and successful businesses. Most are quite small, however, and cannot provide the full range of services needed by the novice exporter.

In contrast, export trading companies, as envisioned in the legislation pending before Congress, could provide all export services—including financing, transportation, warehousing, packaging, marketing, banking services, and legal services—for an array of products in a variety of markets. They could be effective instruments for channeling an increasing flow of American goods and services to foreign markets.

Export trading companies could provide a "one stop" facility for any sized firm interested in exporting. They could seek out American products which are appropriate for markets they have discovered overseas. With sufficient capital, they could achieve significant economies of scale and, thus, reduce the capital outlay required of participating firms engaging in exporting for the first time.

In the first instance, export trading companies with these characteristics are most likely to be formed by those who already operate in international markets. For example, manufacturers who export their own products may find the export trading company concept helpful in using their existing overseas network for selling some products of smaller U.S. companies which do not export on their own. Over time, companies which do not currently export would be likely to take advantage of export trading companies.

Similarly, because of their expertise and financial resources, banks could play an important role in the successful development of export trading companies. Many banks already have global coverage by agents or correspondent banks. These banks are already in the business of evaluating risks, understanding foreign markets, and providing financing. They are ideally qualified for facilitating exports through participation in export trading companies.

The administration supports the purpose of the legislation in question in permitting bank equity in export trading companies. We recognize that allowing banks and edge act corporations to invest in commercial operations requires a change in the longstanding national policy of separating banking from other commercial activities. Even so, the administration believes that the bill's purpose of promoting bank participation in export trading companies can be realized while safeguarding the integrity of our financial institutions. This can be accomplished by providing for broad oversight of banking participation by the appropriate regulatory agencies.

It is worth noting that this legislation would bar any banking organization from taking a controlling interest or making any investment over $10 million without prior approval of the appropriate regulatory agencies. Further, the bill as drafted would prohibit aggregate investments by any banking organization of more than five percent of its consolidated capital and surplus in one or more export trading companies. In addition, the bill would prohibit the total of a banking organisation's historical direct and indirect investments in a trading company and loans to such a company and its subsidiaries from exceeding ten percent of the bank's capital and surplus.

These provisions will help assure that the continued integrity of our banking institutions is not in any way endangered by their involvement with export trading companies.

Of equal importance is how this legislation might affect the antitrust policies of the United States. For this legislation to be successful in promoting exports, businessmen will need certainty that their participation in the activities of export trading companies will not expose them to liability under the antitrust laws. At the same time, we must make certain that our efforts to promote exports abroad, and thus make this nation more competitive in world trade, do not lead to anti-competitive developments within the United States.

In amending the Webb-Pomerene Act, the legislation at hand establishes a procedure for an export trading company to present to the Department of Commerce a reasonably detailed statement of the export trade activities it plans. As proposed by the Senate, the Commerce Department, in consultation with the Attorney General and the Federal Trade Commission, would certify these activities as immune from the antitrust laws only if (1) they would promote export trade and (2) they would not result in a substantial lessening of competition within the United States.

Once certification was granted, the certified entity would be exempted from antitrust liability for the activities described in the certification. This immunity would not extend to activities not covered in the certification. The Department of Commerce could revoke the certification if the entity's activities ceased to conform to the statutory standards. The Attorney General and the Federal Trade Commission would be empowered to seek decertification in court on their own initiative.

I understand that some changes have been made in this proposed procedure during the early stages of the House's consideration of this bill. I want to impress upon you the need, as we see it within the administration, to reconsider these changes. I agree with Secretary Klutznick and with others who feel that one criterion in the consideration of possible antitrust exemptions should be whether granting the exemption would serve a specified need in promoting export trade.

Also of importance is the fact that this legislation, in addition to allowing export trading companies to take advantage of the antitrust exemption in the Webb-Pomerene Act, would also expand the coverage of that act to include trade in services.

Despite the fact that this law has been in our statutes since 1918, in 1979 only 33 export trade associations qualified for Webb-Pomerene treatment. Altogether, their share of total U.S. exports was less than two percent. It is almost an understatement to say that this antitrust exemption is rarely utilized.

In part, this is because the exemption is so narrow. By definition, export trade is limited under the Webb-Pomerene Act exclusively to the export of "goods, wares, and merchandise" from the United States. This provision has been interpreted consistently as precluding the export of services. Expanding this statutory definition to include trade in services could do much to promote American exports, for the area of services is a vitally important part of our foreign trade.

The American economy is becoming more and more service oriented. Almost 7 out of every 10 working Americans are employed in services. About 65 percent of our gross national product is derived from services. Trade in services—such as advertising, accounting, banking, insurance, leasing, franchising, construction, engineering, shipping, communications, and so many others—is a significant factor in reducing our trade deficit. The latest available U.S. Government estimate put the value of overseas sales by foreign branches and the subsidiaries of U.S. service industries at about $50 billion in 1974. Since then, this figure has probably doubled.

The United States is still the largest service economy and the largest exporter of services in the world. Between 1969 and 1976, however, our percentage share of world trade receipts for services fell by one-fifth, from 25 percent to 20 percent of the global total. Our services industries face strong competition from industrialised countries such as Japan, Germany, and France. Moreover, the more advanced developing countries, such as Brazil and Korea, are daily making inroads into international service markets.

Expanding the Webb-Pomerene exemption to cover services would help meet this new competition by enabling export trading companies to engage in trade in services as well as trade in goods without fear of prosecution under the antitrust laws.

Clearly, there is no single model for an American export trading company. We cannot and should not simply copy the devices or practices of other countries. Instead, we must isolate the essential characteristics of successful exporting entities and blend them with our necessary traditional principles of sound banking and economic competition. I am confident that we can do this in a way which will allow the creation and the successful operation of export trading companies such as are envisioned in this legislation. These trading companies will, in turn, help us achieve increased exports, increased competitiveness, and thus, increased prosperity.

Mr. BINGHAM. Thank you, Mr. Ambassador.

SUBCOMMITTEE CHANGES

Let me first make a general comment. You have both stressed the importance of exports, and certainly this committee shares your view. What strikes me about your comments on the bill we have virtually reported out from the subcommittee is that in two instances we do more in that bill to encourage exports than you are talking about.

In both cases—on the antitrust provisions and the tax provisions—you criticize something we have recommended to do for our business community to facilitate exports. I don't say it is your fault. I can guess you are reflecting here the comments of other departments of the Government, notably the Department of Justice and the Treasury Department, who perhaps do not share all of your views as to the extreme importance of encouraging exports. They look at it from a different view. But I must make that general comment.

Now, as far as the Webb-Pomerene situation is concerned, we reflected in the proposed amendments to the bill the testimony of the Webb-Pomerene associations who are in business and doing well. You say they are down now to 2 percent of our total exports. I guess that is not very much, but it is not insignificant.

Certainly the film industry is one which provides this country with substantial export revenues. They are very concerned about the Senate bill, because, they say, we do not know what effect it will have on them.

You are suggesting to us we ought to give exporters greater certainty, and we share that. The Webb-Pomerene associations, who testified before us, say if you do not leave us alone and let us continue in the way we are operating—and we are doing it successfully, and we have been for years—you are going to impose a new procedure on us. That creates new uncertainties for us, and we might end up going backward on exports rather than forward. So that was the reason for grandfathering them in. If they wished to be left alone to operate the way they are now operating, that would be all right.

As far as the certification procedures are concerned, we tried to simplify those procedures for new associations and make it easier for them to export. They should not have to establish things that may be difficult for them to establish, and they need flexibility to meet changing circumstances.

So those are just some general comments about the type of legislation we have recommended. Let me point out one further thing. That obviously this bill will have to go before the Banking Committee for the banking provisions, the Committee on the Judiciary for the Webb-

Pomerene provisions, and Ways and Means for the tax provisions. And you may be right that at some point we may decide to pull back from some of our amendments.

So we are dealing here with a multiheaded affair, and it is going to be difficult to get action. We may have to decide at some point to go ahead with a simpler form of the bill that does not raise some of these problems. And I think we can make that decision down the road. But as far as this committee is concerned, we look at it from the point of view of trying to facilitate exports.

I think we have done a reasonably good job, and I have no specific questions at this point. But if you would like to respond to what I said, Mr. Secretary or Mr. Ambassador, you are welcome to do so.

Ambassador Askew. Congressman, let me respond because I think a good bit of what you said was directed at my remarks.

This committee has done a good job. You personally have done a good job. Congressman Bonker has worked very hard, as have many people.

I happen to be a political practitioner. All I am suggesting to you is there are some hurdles down the road which we have to take into consideration in the time frame we have. I am not just talking about within the executive; I am also talking about within the legislative.

I believe the Senate antitrust provisions would find much less difficulty getting through Judiciary than those contained in the pending bill. By that, I do not mean to say that yours, in the long haul, might not mean more, but unless we pass something, we are not going to accomplish anything. All I am trying to do is to prevail upon you because of the hour that some of these provisions, particularly in the area of antitrust, don't seem to be amenable to compromise. By going in with some kind of understanding, one builds up quite a head of steam. And some of the provisions contained in the Senate bill are very important in terms of showing that trading company legislation will not inhibit competitiveness within the United States.

I don't question anything you have done, even as regards the tax provisions. What I am saying, as Secretary Klutznick also indicated, is that the tax provisions concern a lot of money at this point. As regards subchapter S, there is a study now being conducted on its overall reform. I am just trying to share my view with you that there is a tremendous amount of work that has been put into this legislation on both sides of the aisle and in both Houses of the Congress. And I would hope that my remarks would not be construed as being critical of any particular provision, but rather viewed as trying to produce a bill which will, with the differences we have suggested, be very important and very constructive.

Mr. Bingham. May I just respond to that briefly?

In one sense, what we had in mind here was to stimulate consideration of these matters by some of these other committees, particularly Ways and Means. We would like them to focus on these problems. They are the primary committee concerned with taxation. There is no question about that. But they have not been looking at this, and we think they should.

So if we come out with a bill that may go pretty far, it might stimulate some activity over there.

Mr. Secretary.

Secretary **KLUTZNICK.** Mr. Chairman, I want to endorse what Ambassador Askew has said. There should be no thought in my testimony or what he said that there is any real or implied criticism of the work of the subcommittee.

I would like, however, to point out not political but practical considerations. He is the practitioner. I am only sitting here trying to run a business.

INTERAGENCY COMPROMISES ON EXPORT TRADING COMPANY LEGISLATION

No. 1, this bill and the need for it has a long history, and I have been here but a short while. Hearings were scheduled in the Senate, and I asked for a postponement so that we could go to work and see if we could get an administration position.

Mr. Chairman, you know this Government much better than I, and the negotiation procedure which produced this bill was what every negotiation procedure is, and you have indulged in them quite frequently—a bit of give and take in an effort to satisfy the real concerns of some who have real responsibilities in this Government. And it was not easy at points.

Therefore, when Ambassador Askew says that this was arrived at in that fashion, I can testify that any major changes, for example, on the question of antitrust—need I tell this committee how important the whole tradition of antitrust has been to this society? And when you seek exception, I have been confronted with statements that there will be no more exceptions. And I must say that the Attorney General, in my judgment, reached as far as he could under the state of the record in agreeing to what is now before you.

I would hope that the House, with a recommendation from the House Judiciary Committee with whom I have spoken, with a recommendation from the Attorney General, will find it possible to facilitate the consideration of this bill.

With respect to Webb-Pomerene, there is considerable concern, as you have expressed. I think it has some merit, and I think an effort should be made to assuage that concern within the limitations of the time frame available.

Third, with respect to the revenue aspects of the bill, as Ambassador Askew has already indicated, this is a year in which everyone is concerned about revenue or the lack of it, and I think it is wise to proceed cautiously.

We are making representations here honestly felt, but I think we should also try to consider that there may be something to the business of not moving hastily on things like subchapter S or the expansion of DISC without going into it quite seriously and at length.

Therefore, I come to the ultimate thing so far as the Department of Commerce is concerned. Time is of the essence. We have lost a lot of time. There should be no illusion. If this bill is to become a law this year, we will need months to actually get it into operation, and if we should lose a year, we will be talking about 1982 instead of 1981, and it will mean a year of increasing deficits in our trade posture.

No bill is ever perfect which is as complex as this, and I doubt whether this will be perfect no matter how it comes out, but it is operable, and it gives us a chance to prove that this instrument is vital to our economy and to our country.

Thank you.

Chairman ZABLOCKI [presiding]. Mr. Lagomarsino.

Mr. LAGOMARSINO. Thank you, Mr. Chairman.

ANTITRUST LAWS OF OTHER COUNTRIES

Mr. Secretary, on page 4 of your testimony you mentioned many of our successful trading partners—West Germany, France, Japan, Hong Kong. I would like to ask you whether or not you know what kind of antitrust provisions those countries have with regard to export trading companies.

Secretary KLUTZNICK. I can refer this to Mr. Herzstein, which I will. I don't know what they have, but in many, from my knowledge of the law when I practiced it, they have very few, if any, provisions which have the tradition ours have.

Mr. LAGOMARSINO. So you would have to probably then slightly change the sentence that comes before that which says, "We should learn from the experiences of many of our most successful trading partners," because that is certainly one of the reasons they have been successful, as I understand it.

Secretary KLUTZNICK. Yes. I would say "Yes." I will ask Bob to respond to that, but let me say this. We learn from them by trying to fit into our frame of society and legality the instrument they have used.

I believe, and I say this with complete candor, that the Attorney General in his ruling and his approach to this has made an honest effort to preserve both what has been the tradition of our country and at the same time make possible the operation of export trading companies.

Now, maybe Under Secretary Herzstein, who is very experienced in the law of other countries, might be able to answer that more adequately.

Mr. LAGOMARSINO. Maybe we could have it for the record. I don't think it is important now, but I just wanted to make that point, that I think in trying to deal with this subject, it is important we look to what other countries have done. That does not mean we necessarily slavishly follow it, and I would not recommend we do.

For example, the Japanese Government's involvement in business there is something far more than I think we want to do here. But the point is the Japanese Government is very interested in and very active in promoting exports, something I think we should do.

GRANDFATHERING EXISTING WEBB-POMERENE ASSOCIATIONS

I should say I also agree with your statements on pages 6 and 7 where you say the answer may lie largely in the inhibiting effect of some of our regulatory mechanisms. But as the chairman of the subcommittee was pointing out a moment ago, I think another thing we have to do is provide credibility in what this Government is going to do in the future.

And I think if we would take action—as you said, it would take months to put into effect—that many of the existing Webb-Pomerene companies would find they have been not only not helped but actually hurt. And I think if we were to go that route, not only would we find the existing Webb-Pomerene companies would be hurt, some of them perhaps would go out of business, or at least there would be a slowdown in their efforts to increase exports. But I think a lot of new companies or new organizations who might be thinking about getting in and taking advantage of this act might have some real hesitation to do so, too.

So I think this question of a grandfather clause goes far beyond just the technicalities involved in it. I think we also have things like reliance, credibility, what the real policy of this Government is going to be. Are we really interested in exports, or, as some people might gather from what you both have said—namely, time is of the essence—are we only interested in passing a bill.

Personally that is certainly no desire of mine. I think we want to pass a bill which will do some good.

Secretary **KLUTZNICK**. I want to make my position a bit more clear on the Webb-Pomerene issue. I agree with credibility. Credibility means getting out and getting some work done, too. I think that issue ought to be worked on before the legislation is passed. I think it would be decidedly unfair if it is 2 percent, 3 percent, or 1 percent of what we do. We cannot afford to lose that volume either.

And there is a question of credibility involved, and as far as our Department is concerned, and as far as, I am sure, the Ambassador is concerned, we will be delighted to work with you to work that out.

Mr. **LAGOMARSINO**. I am delighted to hear you say that. I would like to ask both of you for the record, does the administration oppose the operation of existing Webb-Pomerene associations?

Secretary **KLUTZNICK**. The issue has never been presented in that form. As far as I am concerned at this point, it is the first time the issue has to be faced, and under those circumstances I would say for the Secretary of Commerce that he does not oppose.

Mr. **LAGOMARSINO**. How about STR?

Ambassador **ASKEW**. We are now the USTR.

Mr. **LAGOMARSINO**. Well, whatever.

Ambassador **ASKEW**. Well, "whatever" is a big difference in our mind.

First of all, let me say we're really trying to expand export opportunities and not in any way to inhibit Webb-Pomerene trading associations. We would be in support of their continued operation. Our concern is a two-tiered system of export trading companies, and the distinction between those automatically given certification under the law and those which are not, and what the effect would be.

As Secretary Klutznick indicates, we recognize it is a real question. I think it involves some exploration. At this point, we see some problems in terms of the pending bill's approach.

STIMULATING INTEREST IN EXPORT QUESTIONS

On the other issue, you are not interested in just passing any bill; neither are we. We are interested in passing a bill, as good a bill as we can. And I can appreciate fully what Mr. Bingham said about wanting to stimulate the other committees. I frankly share your feeling because I have wanted to stimulate some of the other departments in the executive branch when it comes to trade. I have seen too frequently that we seize upon trade restraints as the easier way to go, a quick fix to avoid dealing with the fundamental questions facing American industry. This includes capital formation and compliance with Government regulations.

So I want you to know I do the very same thing as you. Both the Secretary and myself have really taken the lead in the administration in this area because it rightfully is one in which we are given some jurisdiction. We try to get the other agencies to understand that they have responsibilities in this area as well.

My only concern is the stimulations might wind up requiring a little time to handle yet we may be running short of time. That is my only concern.

Mr. LAGOMARSINO. Mr. Ambassador, if I might impinge upon my own time which has expired, I would like to say I very much appreciate your comments just now, and as I said in the subcommittee when we were considering this legislation, I don't think you can look at exports as one item or as one separate part of what we are trying to do. And certainly you cannot export something unless you have it here.

So I think it is very important that we keep in mind all of these things you just mentioned—capital formation, business climate, and so on.

Thank you.

Ambassador ASKEW. What we must do, Mr. Lagomarsino, is make sure that after we open the markets—as we are trying to do—after we give businesses the devices to utilize the market, we have policies which permit them to be competitive here and abroad. We need to be more competitive at home in order to assure the availability of selection for our own people.

Chairman ZABLOCKI. Mr. Rosenthal.

Mr. ROSENTHAL. Thank you, Mr. Chairman.

HOW WOULD EXPORT TRADING COMPANIES OPERATE?

Could either one of you tell us how you foresee these export trading companies working and how they would work together with the present export responsibilities of the Department of Commerce, and how the $60 million that is proposed under this bill would be spent?

Could you graphically describe how this process would play out?

Secretary KLUTZNICK. Mr. Rosenthal, I don't know how graphic I can be, but I will try to indicate to you what some of our thinking is. And having lived through thinking before, I want to assure you that some of it will succeed, and some of it may not be so successful.

First of all, this opens up the door for the fastest growing segment of our economy, the small- and medium-sized businesses, for exports. People tend to forget that in the last 9 million added employees, 6 million were in the sector called small- and medium-sized business, and 3 million were in local and State government and nothing in large business.

So it opens up an entryway to a segment of the business that has not been as thoroughly involved in exports as it should be and can be.

Second, it permits an individual or a group of individuals to come together in association without concern for the provisions of antitrust because they will have been exempted from it, as long as they are in the kind of trade that is specified. They may engage in one of a number of activities. They may be manufacturers themselves, producing an item which is wanted in foreign markets. For example—and this is no reflection on large business—but a small business can meet a standard in France or Italy for its export in a matter of hours or days without having to call a board meeting and a series of experts in order to determine whether it should be done.

There is a flexibility about a small business which enables it to move into markets. I was surprised to see a man in Illinois, my own State, tell me that he sells one little item abroad and has been making it, but he changes it now and then in order to get into other countries. So it gives you flexibility in the mechanics of preparing the merchandise that my good friend, the Ambassador, referred to.

No greater truth was said than that you have to be competitive at home before you can really be competitive abroad, and that means also being flexible enough to mold your item to that abroad.

That company may also have a trading expert, or it may be a trading company exclusively without a manufacturing arm that goes abroad and seeks out markets. For example, there is a man that just came back from China, and he found an art market. He found it for here, not there. There are things we can sell abroad if we find out what they want.

Mr. ROSENTHAL. Let me ask small, specific questions, Mr. Secretary.

ROLE OF THE BANKS

The bill talks in terms of bank participation. If a little manufacturer anywhere making bolts and nuts wants to sell them, what does he do? Where does the bank come in? How does he proceed?

Secretary KLUTZNICK. I was asked that question yesterday when I was making a talk, and I said the bank has two advantages really. It is an asset to all of us to have a banking institution involved in an association of this sort in terms of the sheer integrity of accounts, the setting of relationships, relationships with other countries, exchange in funds.

A bank is very important in foreign trading. Should they go into a market where the dollar is at a disadvantage, or should they not, and what they have to do to go there. So the bank has to have—and today banks are all over the world anyway.

Mr. ROSENTHAL. The XYZ nuts and bolts manufacturer, what does he do?

Secretary KLUTZNICK. He has a bank of some size now, but if he has a small one and doesn't need anything of bank credit, he goes, as anyone does, to a bank and gets advice from them.

USE OF FEDERAL FUNDS AUTHORIZED BY THE BILL

Mr. ROSENTHAL. What happens to the money the Federal Government puts into this scheme?

Secretary KLUTZNICK. Well, the money does not go into the scheme necessarily unless there is an established need in an area that qualifies under the law—EDA, for example.

Mr. ROSENTHAL. I still don't understand it. I am sure it is my fault.

Secretary **Klutznick**. Well, when we talk about putting SBA money in or EDA money, that is appropriated money, that has to qualify under the legislation under which that money is put in. Suppose there is a little distressed company in a town in your district which is not doing well and does have a product which can be marketed abroad but needs some help. It probably would qualify for EDA or SBA help. It would not be a sound banking risk, but it might be a very sound risk in terms of the EDA or SBA qualifications. Therefore, having that facility is important.

There is another thing involved in this. These things do not happen alone, as you know. You have to put them together and stimulate them and propagandize the idea, and sometimes you come in—we have, I am sure, small companies now in our Minority Business Development Agency that are getting help which could qualify for service abroad. And we want to facilitate them doing it because we are short of funds there for other purposes.

It is not as easy to explain graphically as it is on a piece of paper. It is business in its normal sense. It has to be sound to start with. It has to have an objective. Its objective is export. It has to be qualified to export or to locate export opportunities. It has to have banking relationships where necessary. Many of them will have their own, or it may need assistance if it is a company that is qualified in every sense but is not bankable in the normal sense.

Now, that is the best way I can explain it.

Mr. **Rosenthal**. My time has expired, but I had one other question, if I might, Mr. Chairman, on a related subject.

SALE OF ENGINES FOR ITALIAN FRIGATES

In view of the Senate vote on the Stone amendment blocking the sale of the General Electric engine cores to Italy for use in those frigates for Iraq, is the administration going to take a different position, or is your Department going to rescind the export license you issued?

Secretary **Klutznick**. I have no way of answering that until we have the final report of both the legislation here and there. If we are ordered not to do something, we normally observe an order.

Mr. **Rosenthal**. Has the administration taken any different position on this subject?

Secretary **Klutznick**. The administration has been abroad lately. I have not discussed it in the last week.

Mr. **Rosenthal**. Thank you, Mr. Chairman.

Chairman **Zablocki**. I may say I think the administration has taken a positive position in opposition to the Stone amendment.

Mr. Pritchard.

Mr. **Pritchard**. Thank you, Mr. Chairman.

Mr. Secretary and Mr. Ambassador, I appreciate your coming before the committee, and might I say I appreciate your attitude and thrust, and I think it is a very healthy attitude, and it is nice to hear.

GRANDFATHERING

I have some questions that I would like to ask. Have they asked about the grandfather language? Can the Webb-Pomerene associations continue their operations as they always have?

Secretary KLUTZNICK. We said we would make an effort to work it out with the committee.

Mr. PRITCHARD. Good. I think that is important.

STATE AND LOCAL PARTICIPATION IN EXPORT TRADING COMPANIES

What should the legislation say about State and local government participation in export trading companies? We have some of the States, you know, getting into this.

Secretary KLUTZNICK. I think we are completely neutral on that, as I recall various bills that have been before us.

5-YEAR REVIEW OF THE LEGISLATION

Mr. PRITCHARD. Another question. A 5-year review of the utility of the law is proposed in this legislation. Will 5 years give us an adequate picture, or should a longer time be authorized?

Secretary KLUTZNICK. Well, I would hope that 5 years would give us a very adequate picture. There is an urgency about this matter which would compel us, it seems to me, to start proving something in less than 5 years, but 5 years ought to be adequate. If we can't do it in 5 years, we will not be moving very fast.

Mr. PRITCHARD. One of my problems is by the time this bill gets rolled around in all the different committees, I wonder how long it is going to be before the we actually get this.

Secretary KLUTZNICK. Before you arrived we were trying to suggest we hope it is urgent enough to get it this year, but the 5-year review, I guess, would become operative from the time it was enacted. I think it would be a most critical error if we don't find a way of getting started as quickly as possible.

I don't like the looks of our export picture. I have just come back from 10 days in Europe, and we have had intimate discussions with five or six countries at the operating level. We have import problems with them, and we have export problems with them. And if we do not get some operating units, we are at a disadvantage.

In many cases their government can act directly. We cannot act. We are not a production instrument. We are a government instrument, and unless we have instruments in the private sector which can act, we are at a disadvantage.

It is just that simple, and we have been in all of our discussions.

STATE OF INTERNATIONAL TRADE

Mr. PRITCHARD. Is there a general slowdown internationally now in the movement of goods?

Secretary KLUTZNICK. Well, I was reporting to our own people this morning that even the socialist economies are running into inflation and a reduced standard of living. And it is not limited to the United States. And as bad as this may have been before, the situation as it appears for the immediate months makes what we are talking about even more urgent. We may not be able to produce the same results we could in a flourishing economy, but if anything, it makes the effort more necessary.

Ambassador ASKEW. Mr. Pritchard, I wonder if I might add a comment.

SIGNIFICANCE OF THE LEGISLATION

We feel that time dictates that we move forward as fast as we can toward this additional mechanism. Passing it for the substance contained in it is important in and of itself. Yet this legislation goes beyond that in terms of significance. It signals to businesses that there is going to be a change in government attitude. Hopefully, it will encourage them to start talking about investment which will be necessary if they are to become more competitive.

If this Congress simply passes an additional or modified exemption on antitrust, much as that contained in the Senate approach, I believe it will have importance to business. It will affect how they view what they have to do in the future to increase their competitiveness. This goes beyond the importance of the mechanism, as important as it may be.

Mr. PRITCHARD. I understand. I have received that reaction from the business community in my area and in talking to people who do overseas work. We greatly handicap ourselves in a field in which contrary to a lot of assumptions, we have not always been very good. The markets in parts of America are so inviting and the short-term payoff is so much better that generally American industry has not been willing to make those upfront decisions and investments, which, unfortunately, many times have a long run before there is a payoff.

So they have used this. Maybe it is an excuse. Maybe it is a psychological thing. But this is one of the things they cite as making it more difficult to do business.

This is part of this whole business of our being productive and being able to swim in the world stream, if we are going to maintain the standard of living our people think we should maintain.

So I appreciate the position of the administration.

I have no further questions, Mr. Chairman.

Chairman ZABLOCKI. Mr. Bonker.

Mr. BONKER. When Mr. Derwinski came in a few minutes ago, he asked me how this bill could help volcanoes, because Mount St. Helens is in my district. I informed him we needed to allow export trading companies so we can export volcanic ash, which is in great surplus in the Western States these days.

[Laughter.]

Mr. BONKER. I welcome the witnesses and the administration's support of the legislation before the committee.

WHY SO FEW WEBB-POMERENE ASSOCIATIONS

I would like to ask the Secretary to comment on a question which has been before the subcommittee but not the full committee. Why, in the long history of the Webb-Pomerene Act, have we not had greater success in the formation of trade associations for purposes of competing in the international market?

Between 1930 and 1935, the number of trade associations under this act numbered 57, which represented about 90 percent of the total exports. In 1979, that number had dwindled to 33, and the share of U.S. exports under the provisions of the Webb-Pomerene Act dropped to less than 2 percent.

Now, obviously, there is not much interest, nor is there a great deal of enthusiasm, to form trade associations under the Webb-Pomerene Act for the very purpose which we are addressing in this legislation. I wonder, in your experience, why there hasn't been greater success with trade associations under Webb-Pomerene?

Secretary **Klutznick**. Well, my experience with Webb-Pomerene is very limited. I can only say that there probably are two good reasons. One is that this act is different than Webb-Pomerene and qualifies and gives an export trading company a degree of certainty about the possibility of prosecution or a defense to the antitrust act that did not obtain in the past.

ADMINISTRATION ORGANIZED TO PROMOTE U.S. EXPORTS

Second, none of these things really work unless their time has come, unless there is some energy behind them. This Congress and the President saw fit to create an entirely new setup in the trade field. We have now a permanent U.S. trade representative, and I must tell you one must not underestimate what this means, because there are any number of multilateral relationships which have to be constantly pursued, not just spasmodically, in order to open up markets.

We talk about dumping cases here. We have many provisions of our multilateral trade arrangements which can stimulate, through the U.S. trade representative, the opening of foreign markets. You vested in the Department of Commerce a responsibility for implementing foreign and domestic trade, and you have given us authority we take seriously. And we have, therefore, for the first time practically in the history of our country, a department and a service that concerns itself deeply with that which we have neglected. Let us be frank about it.

We have had this huge market of our own that everyone else had access to, and that was adequate for us. We are still 25 percent of the gross national product in the world, but the time has come, as Ambassador Askew has indicated, that that won't do it, and you, therefore, created instruments of Government that have, if I may put it bluntly, promoted responsibilities for American trade.

We sent a mission to Latin America, and I was astonished to find out that when it went down there, they said in the industry this is the first time that the U.S. Government had supported the bids of American companies for a major contract.

We consider it our duty to support American industry abroad. We have, for the first time, an interaction between 65 commercial offices now in the Department of Commerce, all except a few, and our offices here, make a network of 135 offices engaged as sales offices.

Mr. **Bonker**. Mr. Secretary, let me be a little more explicit.

REASONS FOR FEW TRADE ASSOCIATIONS

The Senate report that accompanied S. 2718 specified four reasons for the poor showing in the formation of trade associations. It said, first of all, that U.S. industry lacked sufficient product market domination and the price controls to compete in the international market.

Second, the business community traditionally has placed a top priority on tapping the vast domestic market in the United States.

Third, the ever-expanding U.S. service industries have been excluded from qualifying for the antitrust agreements, while cooperative arrangements and joint ventures have been pretty much the dominant force.

Last and perhaps most significantly, the Department of Justice—and to a lesser extent the FTC—have been perceived by the business community as exhibiting a thinly veiled hostility toward Webb-Pomerene associations. The vagueness of the Webb-Pomerene Act leaves uncertain what activities will constitute a substantial restraint of domestic trade. As a result, the threat of antitrust action has served as a deterrent to broader utilization of the Webb-Pomerene Act.

SUBCOMMITTEE'S SIMPLIFICATION OF CERTIFICATION PROCEDURES

Most of the witnesses who came before our panel confirmed this statement. What we attempted to do in the subcommittee was to write a provision that would take away the uncertainty and the legal confusion that now accompanies the Senate provision. And the subcommittee provision is one provision to which you object in this legislation.

When I look at S. 2718, which you apparently support, the language describes a very elaborate, complicated legal procedure which is going to do more to inhibit the formation of trading companies than to encourage and promote them.

Now, this is probably a question the Judiciary Committee will have to take up, but what we have attempted to do in the subcommittee is to simplify and clarify the process by which companies would be allowed to form trade companies. If we don't do that, if we replace one set of complicated procedures with another set of complicated procedures, we are not going to have the formation of any more trading companies under the provisions of this act than we have had under the provisions of Webb-Pomerene.

Secretary Klutznick. I am not sure you were here when we responded to that, Congressman.

First of all, what was presented in the Senate bill was a very carefully crafted attempt to preserve the traditional commitment of our country to competitive enterprise; by preserving as much of the antitrust approach, that would still permit the exception to be made. This was after weeks of negotiation.

There are some in the Congress who would still think, and I have spoken to some, that we have gone too far in this respect. And before we are through, you will hear some speeches to that effect on the Senate floor.

What we tried to achieve here was a workable compromise which is, of course, the art of political action. We believe it will work for the reason that I started to explain before.

Webb-Pomerene did not have a department or agency directly conconcerned with the development of Webb-Pomerene associations. That was a handicap. The Department of Commerce is deeply concerned and will continue to be in working this procedure that you call complicated.

Sir, I do not want to criticize that conclusion. It is not exactly simple, but it is so simple in comparison to what we had worked over

pages tightly bound

for 4 months that I would urge you to at least give this procedure a chance instead of opening up a Pandora's box that will mean we won't get a bill for another year or two. If it doesn't work, there's time enough to take another look.

I think it will work. Our people think it will work. And that is why we support it.

Chairman **ZABLOCKI.** Mrs. Fenwick.

Mrs. **FENWICK.** Thank you, Mr. Chairman.

I am reminded of so many things I would like to discuss. You missed one country with an extraordinary export record—Belgium. I saw a group of Belgians yesterday, and 55 percent of their GNP is for export. Imagine. And I have noticed that. In Woolworth's when you look for buttons, they are Belgian buttons; when you order dish towels, they are Belgian dish towels. It is incredible, the export trade of that country.

SUPPORT OF GOVERNMENT APPLICATION OF ANTITRUST LAWS

But what I would like to follow up on is what the chairman of the subcommittee, Mr. Bonker, has been discussing. The purpose of antitrust is to protect consumers from combinations in restraint of trade, is it not?

Secretary **KLUTZNICK.** That is right.

Mrs. **FENWICK.** Every businessman I have spoken to tells me one of the main troubles—one of the main reasons they don't want to touch a Webb-Pomerene arrangement—is the Justice Department's reluctance to say when they are clear and when they are not. It is the same thing with the Federal Trade Commission, unwilling to tell the owner of a little shop when his contract is in compliance and when it is not. The answer always contains a clause, "this is advisory only," which means he will have no protection in a court of law.

We are going to have to bring this kind of responsibility of Government to business, and the actions of the Justice Department are another example of it. What consumer dangers are we afraid of? What consumers are we trying to protect when we say you cannot form a trading company for export? Are they not twisting the purpose of "in restraint of trade" the way the Interstate Commerce Commission did "public convenience and necessity" to tie up the whole trucking business?

Is that not what is happening when institutions go beyond the intent and even the letter of the law? What possible damages could come to any consumers anywhere if trading companies are formed to decide what they are going to sell, or pay a certain person to represent them abroad?

What is the harm? Whom are we protecting?

Secretary **KLUTZNICK.** Mrs. Fenwick, I can answer it as I heard it, not as I believe it. I taught constitutional law once when I was young, and I gave it up because I didn't understand it well enough, I guess.

But the simple fact is that there is the possibility——

Mrs. **FENWICK.** Of what?

Secretary **KLUTZNICK.** I said the possibility or the probability—I am trying to make—maybe the Attorney General ought to be here and not me on this one.

The simple fact is that these companies could get so huge that they might have an impact—this is the thinking; it is not my thinking—

they might have an impact on the competitive aspects of our domesti society.

Mrs. **Fenwick.** May I ask you then another question—and this i something we ought to know, and perhaps the expert in foreign countries could tell us this if the Secretary prefers. But what happens wit Belgian companies or German companies that do export so much? D they become giants and strangle the competition within the country Is this what happens?

Secretary **Klutznick.** I could answer for Japan. They have som very large ones, and they don't strangle because the law and history is different. And incidentally, the law and behavior of the Europea countries is different, entirely different than ours.

Mrs. **Fenwick.** Do you mean ours tend to strangle more than othe businesses?

Secretary **Klutznick.** No. I wouldn't say strangle. I would sa we have a different tradition and a different relationship to Government in business than most of those countries have.

Mrs. **Fenwick.** Mr. Secretary, perhaps we must change our attitude. I think what the Ambassador said is absolutely crucial. We must accept the fact that not only do business and labor live on the bottom line, but so does the country, so does Government. We must insist on that and we are not going to be able to as long as the agencies of Government continue to go beyond the word, intent, and spirit of the law in their interpretation of the law.

In other words, our departments of Government must be concerned about the consumers and determined that they shall not suffer from unjust combinations which keep prices beyond what they should be, to the detriment of the consumer. That is their purpose. It is not their purpose to stop trading companies from forming.

They apparently fear the company will become a giant and occupy so much of the foreign market that it will then begin to occupy the whole American market, but there is no history of that, is there?

Secretary **Klutznick.** No. I appreciate your views, but don't put me in the position of defending opposition to that view. I wouldn't be here supporting that bill if I didn't agree in large measure with what you have said.

Mrs. **Fenwick.** But, Mr. Secretary, sometime or another in this Congress we must strike for what we really think is the right bill, for what we really think is going to serve the public good. Too often before a bill even gets to the floor of the House, we start cutting it down because of what is known as a delicate balance.

We faced that the other day, a delicate balance, and that means competing interests coming before the committee. And this delicate balance of compromise is worked out before the House ever gets a chance to judge the issues.

Sometime or another—and I agree with the Ambassador that it is absolutely critical—we must act. To have the United States in this position, when we ought to be preeminent in the export of manufactured goods, is pitiful.

We are not doing a job here in Congress to make it possible for our businesses to compete equally, and I am glad to see this change.

Ambassador **Askew**. Mr. Chairman, I wonder, with your permission, if I might——

Chairman **Zablocki**. Yes.

WHAT WEBB-POMERENE ASSOCIATIONS AREN'T ALLOWED TO DO

Ambassador **Askew**. I would like to touch on page 14 of the very excellent report of the Senate Banking Committee which notes what the Webb-Pomerene associations could not do. They could not restrain trade within the United States. We agree with that.

They could not restrain the domestic trade of any domestic competitor of the association. We agree with that.

They could not artificially or intentionally influence prices within the United States of commodities of the class exported by the association. We agree with that.

The problem, however, as I believe you touched on, is that whatever legislation comes out, there really needs to be a willingness on the part of the appropriate Government agency to clarify for these companies what they can and cannot do in a better fashion than it has been done before.

Mrs. **Fenwick**. Absolutely.

CERTAINTY FOR THE BUSINESS SECTOR

Ambassador **Askew**. Unless this is done, I think what you were saying is that this legislation could wind up inhibiting rather than expanding exports. We must recognize we are not going to say to small- and medium-sized corporations, "Look, all you've got to do is get a lawyer and let him or her advise you regarding the antitrust provisions." That is really not good enough.

What we have to do is give some fair, realistic directions to businesses regarding the areas in which they will be certified to operate without being subjected to any liability.

Within that context, however, I think it is important to remember the great strength of the American economic system. We have not utilized unbridled capitalism in the United States. We took capitalism and put upon it healthy restraints. This is what made Karl Marx a liar when he said our whole system would blow up.

If you are not careful in the way you design this legislation, it can have that outcome. So what you have to do is be careful. Have some proper monitoring on businesses, but for goodness' sakes, be willing to tell them what they can do so they can go about their business with a greater degree of certainty than under the Webb-Pomerene Act.

Chairman **Zablocki**. The Chair recognizes himself for a brief moment, since I passed up my time.

I certainly want to agree with you, Mr. Secretary and Ambassador Askew, that this legislation should be expeditiously considered by Congress, although very carefully.

You have mentioned that the Commerce Department has taken new initiatives. I know from a firm in my district that was competing for a contract in a Latin American country that the presence on a trade mission of a representative from the Department of Commerce—we almost had to twist arms to get a representative from the State Department there—was very, very helpful in the firm getting favorable consideration for the export contract. I applaud these activities.

ROLE OF EMBASSIES WITH REGARD TO EXPORT TRADING COMPANIES

Now I have a policy question. This Export Trading Companies Act—how does it relate to our embassies abroad? At the present time, the embassies should have been giving assistance to U.S. firms contracting for export in all of the countries, and so should the consulates in the various countries. But we are closing 14 consulates now.

Is this act going to help that? Merely for the sake of the U.S. economy, I think it might be worthwhile to keep these consulates open to assist American companies abroad.

Would you care to comment?

Secretary **Klutznick**. With respect to our present relationship with State, we have taken over the commercial attachés. They are now directly responsible to the Department of Commerce. We have an arrangement, as we should have, with the Department of State that these commercial attachés will clear political questions with the Ambassador in that country, and thus far in the beginning months since April when this happened, that has worked out quite well.

In other words, the commercial attaché will be, in effect, the arm of the Department of Commerce, but where political issues are involved, appropriately would check with the Ambassador, not the economic counselor, not somebody way down, but at the top. And where there is any conflict, it will come to our office, of course, and to the Department of State for clearance. I think that will work out all right.

It would be wrong for us to have an arm of the Government in a country that did not concern himself with the political problems as well as the commercial problems when he was closing a contract or acting on something.

Now, with respect to some of the consulates which have been closed, I can only say that I am right now in the midst of a discussion on one of them.

Chairman **Zablocki**. I wish you were in a discussion on all of them.

Secretary **Klutznick**. So far I have only gotten a complaint on one. If there are others, Mr. Chairman, we will be glad to look at them.

The question of whether they were essential for commercial purposes is our concern, and in one instance I think we may have slipped a little bit, and we are trying to have them reexamine that situation and, failing that, we shall have to do something on our own.

Chairman **Zablocki**. Thank you very much.

Mr. Fascell.

Mr. **Fascell**. Thank you very much, Mr. Chairman.

VALUE OF CERTIFICATION

I have just gotten into this, but I would like to ask my dear friend, the former Governor, the Ambassador, or the Secretary, just tell me why a company that gets certified under this act will be any better off with the Justice Department than they are under the present act.

I can't read it in here. Maybe I just haven't had time to dig through all of it.

Secretary **Klutznick**. There was no certification under Webb-Pomerene.

Mr. **Fascell**. I know. But what good does it do you when you get certified if Justice doesn't like you after you get certified?

Secretary **Klutznick**. Well, Justice has a chance to express its dislike before the certification becomes operative.

Mr. **Fascell**. Are they a part of the certification process?

Secretary **Klutznick**. No. We preserve the right in us, but they have the right to institute an action. They have a right to do anything before——

Mr. **Fascell**. I hear you. You say it's better. I'm not arguing. I'm just trying to find out.

Secretary **Klutznick**. Well, it's an improvement. It's not 1,000 percent perfect.

Mr. **Fascell**. The improvement is that an association proceeding to get organized would have the blue seal of approval from the Department of Commerce, which theoretically ought to mean something to an intelligent and reasonable Attorney General.

Mr. **Bingham**. Would the gentleman yield to me?

Mr. **Fascell**. Yes.

Mr. **Bingham**. At the present time, they can't get approval from anyone.

Mr. **Fascell**. I understand that.

Mr. **Bingham**. They have to take their chances.

Mr. **Fascell**. I understand that. I'm just asking a question. The difference in the pending bill is, you provide for a certification process?

Mr. **Bingham**. Right.

Mr. **Fascell**. The next question I asked is, how does that help you with an Attorney General? The answer is, you've got the certification of another Government department. And although the Attorney General is not a part of the process at the time, theoretically, it means you have a Federal department's seal of approval. You can start, and if you have a reasonable, friendly Attorney General who is on the same railroad track—and I assume he is most of the time—you are allowed to start operating.

Secretary **Klutznick**. Congressman, I think you have missed something.

Mr. **Fascell**. I'm sure I did.

Secretary **Klutznick**. As Congressman Bingham said, there is no certification procedure at the moment.

Mr. **Fascell**. No.

Secretary **Klutznick**. And if this act passes, there is not only a certification procedure but a provision that we keep the Attorney General informed on what we are doing and that the certificate does not become final for 30 days, as I remember, during which time he is privileged to institute an action, but once he does not do that, there is no liability for damages or criminal penalties under the antitrust law from that point on.

Mr. **Fascell**. I understand that. I am willing to buy the argument that certification is a lot better than no certification.

Secretary **Klutznick.** As long as the certified company operates in accordance with the certificate—and that is clearly explicit, that is what they want, certainty.

Mr. **Fascell.** What do you propose to do in terms of oversight as far as the Department of Commerce is concerned once a certificate is issued? That is what is going to keep the Attorney General off their back.

Is there some kind of continuing review process every 5 years?

Secretary **Klutznick.** Every 5 years the act provides for review, but the Department of Commerce has offices throughout the world and will be in constant touch with certified companies. It has to be.

Mr. **Fascell.** Oh, I realize that. I am just trying to get the dynamics of how you as the Secretary of Commerce are going to interact between the company and the Attorney General so that the company has some reasonable opportunity to operate.

Secretary **Klutznick.** We consider every one of these certifications the certification of a client of the Department of Commerce. As far as I am concerned, that party or that association or that company will be in contact with us and we with them because they become the instruments through which we build up trade in the world, and we have to maintain a close relationship.

Mr. **Fascell.** I am for the progress both of you are trying to make and I plan to support this bill. But I am just thinking out loud about some of the problems.

Once the Department certifies, it seems to me there then is a different relationship with this association than an ordinary business. Therefore, there needs to be in the regulations or in the followup processes here some mechanism with respect to the operation and management that is simply more than arm's length.

After all, you have given them a certificate which gives them life.

Secretary **Klutznick.** Well, the law does provide for an annual report, but if that is all it did, I would be unhappy.

Mr. **Fascell.** That is what I am trying to get at.

Secretary **Klutznick.** It is required to file an annual report once it is certified, but to me as a Secretary, these companies become the sales arm, active arm of the United States of America.

Mr. **Fascell.** I am with you, Mr. Secretary. All I am asking is: Should you have more power and authority than simply revoking the certificate?

Secretary **Klutznick.** Well, as long as we get annual reports we can determine, and as long as our office is in contact with them, we can use our best judgment, which I hope will be good to correct any situation.

Mr. **Fascell.** Oh, I am sure it will be.

Secretary **Klutznick.** Thank you.

Mr. **Fascell.** I am just looking for an intermediate——

Secretary **Klutznick.** It is a big business operation, and we have to operate it that way.

Mr. **Fascell.** I am just trying to determine if oversight by the Department of Commerce, or enforcement of the law should contemplate some process other than revoking the association's certificate which could be a lengthy political and legal process. Can you do something else administratively, is all I am suggesting.

Ambassador **Askew**. Mr. Fascell, I think you could anticipate in the implementation of the Department's regulations to put this bill into effect that, as the Secretary said, they are going to be very mindful of the kinds of activities trading companies are going to get into.

As I understand it, there is going to be a good system going between the Department of Commerce and the people who are to be certified, which I believe will involve some informal counseling as to the areas they are to stay out of in anticipation that the Department of Justice could come in and move to decertify them in court.

It will not so much be the Department of Commerce which will be moving to decertify trading companies; it will be Justice. I think that you will find, as a practical matter, Commerce is going to want this law to work. They will be trying to make sure that whoever gets into trading companies doesn't stray very far——

Mr. **Fascell**. Mr. Ambassador, I am with you. I would get the Attorney General on record, if it were me.

Ambassador **Askew**. Doesn't stray far from that for which they were certified in order to avoid any possibility of decertification.

You have a commitment from the Department of Commerce in this particular area which I think will be reflected in the implementation of this law.

Mr. **Fascell**. I thank you. I haven't had the opportunity to talk to the Secretary as long as I have to you about this issue. But I know how strongly both of you feel about the necessity in this country to change our whole attitude and our posture with respect to trade. You surely have convinced me. So I want to assure you I intend to support the legislation.

Ambassador **Askew**. Whatever problems may still be present with the passage of this particular piece of legislation, we are going to be eminently better off than we are now. This legislation will clarify through the certification process what companies can do. Its success will depend, frankly, upon the commitment of the administration to properly advise all of these people as to that which they can and cannot do.

Mr. **Fascell**. Thank you, Mr. Chairman.

Chairman **Zablocki**. Mr. Derwinski.

Mr. **Derwinski**. I have no questions, Mr. Chairman, except I would like to point out to the Secretary that I met this morning with the Census Bureau officials. I was quite impressed; and I would like to compliment you on an excellent job under adverse circumstances that the Bureau of Census has had to perform.

I just want you to know I have a very positive attitude toward what they have been able to do and the overall accomplishments.

Secretary **Klutznick**. I appreciate that very much, Mr. Congressman.

Chairman **Zablocki**. Mr. Pease.

Mr. **Pease**. Thank you very much, Mr. Chairman.

I, too, would like to commend our witnesses and express my agreement on the importance of this legislation which I do expect to support.

ANY OPPOSITION TO THE LEGISLATION?

I am curious to know, though, whether there has been any opposition expressed to this legislation to your knowledge, or whether you can conceive of who, if anyone, will be hurt by the enactment of this legislation.

Is this a no-fault bill?

Ambassador **Askew.** I think you could expect problems in three areas.

Somewhat immodestly, the Secretary and I are suggesting a certain route which we think will make the problems less difficult. My job is not only one of trade policy negotiations, and I want to tell you the Secretary and I have been together on this. We have had a great deal of negotiations within the executive branch and discussions in the Senate, as well as the House. The banking provisions represent a new step. They constitute a basic departure from not allowing banks to get involved in anything other than banking.

Those provisions have to be carefully worded. We think they are.

The antitrust provisions have to be, as the Secretary says, carefully crafted. That is not an overstatement. They really are carefully crafted. You can expect some reaction in this area if they go too far.

Then, as to the revenue aspects, you are talking about the amount of money that would be involved in opening up DISC to services and going with subchapter S changes.

You are talking about the banking and the antitrust implications of legislation. The revenue aspects of it, I believe, would constitute the biggest difficulty.

Other than that, I think anyone who is involved in this area recognizes the importance of creating a more workable instrument.

Mr. **Pease.** Well, Mr. Ambassador, thank you. All of the three objections or possible objections you mention are likely to be raised by governmental officials or committees of Congress. What I am interested in is whether there is anyone out in the country now who is involved in commerce, specifically in exports, who will be concerned.

IMPACT OF LEGISLATION ON EXISTING EXPORT COMPANIES

I received a couple of letters yesterday from some small exporters in California who seem to think that this bill will work to their disadvantage.

Mrs. **Fenwick.** I did, too. I got a mailgram.

Mr. **Pease.** I couldn't understand exactly from their letter why, but I am curious to know whether you have received any objections or whether you can conceive of any way that this bill would disadvantage firms already in the export business.

Ambassador **Askew.** Mr. Lagomarsino discussed this, as did Mr. Pritchard, in terms of existing Webb-Pomerene associations. The House provision permits grandfathering. We see some problems in the approach adopted; although we want to try to work out some compromise in this regard.

When you talk about antitrust, however, Mr. Pease, I don't think you can limit concern to just inside Government. A lot of people are concerned any time you grant additional exemptions in the field of antitrust.

Mr. **Bonker**. Would the gentleman yield for a moment?

Mr. **Pease**. In a moment. If I might, I would like to pursue that for just a moment. What about a small- or medium-sized company which has worked at the export business and is involved in exporting now, has made its own arrangements, its own contracts overseas?

What will that company do if an export trading company comes along, seeks out its competitor, and says let us use our larger resources, our bigger financial backing, our contacts overseas to push your product?

Now, would not the company that is exporting by itself be at a disadvantage against the promotional activity of a much larger export trading company?

Ambassador **Askew**. Under a free enterprise system, Mr. Pease, there is always someone who can come along and put out a better mousetrap with greater productivity and, perhaps, a lower price. However, that company you are talking about will be afforded all of these opportunities. We anticipate that among those who will make use of this legislation are successful, not necessarily large companies which will expand their efforts to include the products and services of other companies.

That is a reality; that is a reality in any form of competition. Anything available to the other group in your example will be available to that same company if they want to become part of a large one or if they themselves want to start taking on additional responsibility.

Mr. **Pease**. I have only a little time left. I would be happy to yield to my colleague from Washington.

Mr. **Bonker**. The Ambassador pretty much answered your question. We did have witnesses before the subcommittee representing export trade managers who, for obvious reasons, felt this might represent a new form of competition. In some instances also, larger corporations who have an exclusive market in a certain commodity may oppose the formation of export trade companies, which would again pose some competition. But the whole idea of the bill is to allow smaller and medium-sized firms to get involved in the export market.

Mr. **Pease**. OK, I thank my colleague.

USE OF FEDERAL FUNDS

In just the few seconds I have remaining, could I ask the Secretary or the Ambassador to comment on the appropriateness of spending taxpayer money to promote these export trading companies? Will these be loans or grants in the $20 million?

Secretary **Klutznick**. Actually, there is no way in the world we will develop a real program. I want to take a moment on the question which has just been discussed. The Ambassador is completely right that we are a free enterprise system and there will be some competition. The purpose of this, however, is to expand.

When you consider what we are producing today in the way of exports, all that the competition can do is to help the position of the country, not hurt it. As far as we are concerned, the appropriation of

$20 million will have to be, of course, budgeted. The limit is $20 million. There is no way in the world that you can start a massive operation of this sort without some expenses, and it has to be massive to be successful.

The Department has facilities which will be used, but those will have to be augmented. It would, of course, be subject to normal budgetary controls, and you would have another look at it to see whether it is properly budgeted or not. But that is a limit.

Mr. **Pease.** How will the $20 million be spent?

Secretary **Klutznick.** For example, if we are to start out right now and you were to give us the act now, we would have to have training seminars, bring people and companies in to acquaint them with the facilities involved. We would have to go through the certification process to make sure they understand what they have to do.

We would have to do everything we can to expand the number of institutions involved. This will be required of us. Then, as has been indicated by Congressman Fascell, we would have to go beyond that and administer this act. We would get annual reports. We would have to make certain that we can avoid decertification and all of those problems by training these outfits.

So, all in all, the expenditure, of course, will have to be kept at a minimum.

Mr. **Pease.** Thank you very much.

Chairman **Zablocki.** Mr. Mica.

Mr. **Mica.** Thank you, Mr. Chairman.

Let me first say that in anything other than supporting this legislation, I would probably have to disqualify myself because the two gentlemen before the committee are two of the gentlemen I admire most in my career here in Washington. Certainly the former Governor Askew, Ambassador Askew, was one of the most admired figures in politics in the State of Florida and remains so.

EXPORTS AS A PERCENTAGE OF U.S. GNP

With that, I might say I do support the legislation. I have had letters of support from small businesses in my area, which surprised me. I didn't know they realized it was coming up this quickly. But I would like to know, on page 3 of your testimony you indicated percentages of various countries—16, 17, 25, 33 percent of GNP exported, and the United States is 7.5 percent.

What is an appropriate figure? What is your goal under this legislation? Do you have a goal?

Secretary **Klutznick.** I would be very, very happy if you take the figure of $220 billion and we double it. But I would think there is a good opportunity to increase that 7.5 percent to what Japan has, 10 percent. That should be a minimum, and from there we go. It depends entirely on the momentum we get. And, of course, it is related in a measure to the character of the economy we move into. It would be a little tougher right now than it was a couple of years ago. I think it will be easier next year, I hope. That is why I want to get started as quickly as possible.

Mr. **Mica.** Mr. Secretary, I hope you are being modest or conservative because I certainly would like to see it go higher than 10 percent.

It seems to me, from what little research I have had in import-export and in being here and talking with representatives from the U.S. Chamber, that the basis for a rebirth of industrialization in America lies in our ability right here in this type of legislation on international trade.

I thought it was interesting to note that the U.S. Chamber said—the U.S. Chamber of Commerce, now, not the Japanese—the 1980's will be a major decade of export for the United States, and it had better be; and that for the first time in the history of their budget, they will spend more money on international trade than on domestic business, the first time in the history of the U.S. Chamber.

So I think it is a basis we have to build on. I think it is necessary. But I would like to know how long you think it would take to implement if you got the bill right now.

Secretary KLUTZNICK. If the bill were law, in utter fairness we have started to lay principles in our spare time now. We would start, the day after the bill was a law, working on the bill. I must add one thing about that 2.5 percent, lest you go home disappointed. At this point 2.5 percent, 10 percent against the economy as it grows, would take us from $220 billion to $300 billion a year, which is a good beginning.

Now, it might absorb our oil deficit, which is giving us a pain. I wouldn't be satisfied with that. But I want to come back and report, if need be, and I don't want to overestimate what is going to happen and be reminded about it either. Beyond that, I can say we are eager to get started.

WHO WILL MAKE USE OF THE LEGISLATION

Mr. MICA. Can you tell us who is waiting in the wings to move if this legislation is approved, what types of groups?

Secretary KLUTZNICK. You mentioned the chamber of commerce. We are in constant contact with them. They have made all of their offices in America available for cooperation with us. Bill Verity and Dick Lesher have promised us that they would get all kinds of aid in terms of bringing their people together, and they are at the largest membership they have had in their history.

So, we expect to move through the chamber of commerce. We expect to move through NAM. We meet with industry groups regularly. This afternoon we meet with the aerospace industry. We would expect those groups to help us place. People talk about the aerospace industry. You know that most of the companies engaged in the aerospace industry, aside from a few, are employers and 20 people or less—20 people or less. It is amazing.

Very few people understand how many of those companies are eligible for this kind of work. So we go through industry groups. We have constant relationships with them and with the voluntary associations.

USE OF FEDERAL FUNDS

Mr. MICA. Could you just clarify one final point, Congressman Bingham? My colleague, Mr. Pease, indicated he had a question on how that $20 million would be spent. That will be Commerce money spent for seminars and education, that type of program? Or will there actually be grants to trading companies, loans?

Mr. BINGHAM. Would the gentleman yield?

Mr. MICA. I would be happy to.

Secretary KLUTZNICK. We will budget this money. Part of this money will have to go through budget—we cannot do it—to an outfit like our agency—EDA—to be used in connection with guarantees and loans. Part of it would have to go, for example, to minority business development association, where we have a great problem. We have small businesses eligible for this kind of work, for loans and guarantees. Our budgeting will have to be done through normal resources and we will have to go through the Congress for whatever.

Mr. MICA. If the chairman will grant an additional moment, I would be happy to yield to the gentleman.

Mr. BINGHAM. Just briefly, to clarify something, the $20 million in the bill as we have recommended it is additional money for the ordinary programs of the SBA and the EDA—loans and guarantees—but with the idea that they would be paying particular attention to companies with export potential.

I would call your attention to the fact that we knocked out any authorization for fiscal 1981 because that would give us budget act problems. So that $20 million would not start under this bill until fiscal 1982. The kind of startup expenditure for the program, I am afraid, would have to come out of the Department's existing budgetary appropriation.

Mr. MICA. Thank you.

Chairman ZABLOCKI. The time of the gentleman has expired.

Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman.

DEPARTURE FROM TRADITIONAL ROLE OF FINANCIAL INSTITUTIONS

Mr. Secretary and Mr. Ambassador, I sat in on hearings and the markup of this bill in our subcommittee and listened to the testimony with a great deal of interest. While certainly the objectives are sound, I have a great deal of reservation about the departure from our traditional separation of the financial institutions from commercial transactions and investment in commercial enterprises. Furthermore, I am concerned about the fact that we will now be permitting for the first time a dominant role by financial institutions in this sort of an endeavor.

What has our Treasury Secretary said with regard to this measure, and what are some of the regulators in the banking industry saying about this departure from the tradition of separation of financing and commercial endeavor?

Secretary KLUTZNICK. Mr. Gilman, these provisions, as far as banking is concerned, were taken up in the first instance with the Federal Reserve. This was one of the discussions.

Mr. GILMAN. But I understood Mr. Volcker had reservations about the matter.

Secretary KLUTZNICK. He did. He changed it.

Mr. GILMAN. As a matter of fact, I see a letter from Mr. Volcker to Senator Proxmire in the Senate report, in which he says:

My reservations stem not from a lack of sympathy with the purpose of the legislation making export-related services available to more firms in the United States; rather, we in the Federal Reserve have substantial questions about the degree to which banking organizations should be permitted to participate directly in or even control export trading companies.

Then he goes on to suggest some conditions which ought to be in the legislation.

I am concerned, too, about Treasury Assistant Secretary Bergsten's testimony, in which he says:

It is long-established principle in this country that banks should not be owners of commercial organizations. Giving banks an equity interest in the success of a commercial venture could bias their lending, trust, and other activities and could require substantial policing to ensure that such financial relationships are based solely on sound and equitable business considerations.

The basic tenet of American law that banking and banking-related activities should be separate from other business practices demonstrates the difficulty in transferring to the United States the Japanese model where bank-firm relationships are an integral part of the entire business and commercial structure.

What are your thoughts about that departure? I am very much concerned about that departure and I have talked to some of the people in the banking institutions. Some of the older banks have some reservations about this departure.

Secretary KLUTZNICK. Well, there are several things involved. I think it would be unfair to say that at the outset the Federal Reserve was not opposed. They were at the outset. There were discussions held in the first instance. I held them personally with Mr. Wallich. Subsequently, when we thought in this act—and one of the reasons for urging that you do not disturb some of the agreements in this is we have been in and out of bed, I don't know how many times, on some of these provisions, both on antitrust and banking—and when Paul Volcker got into it with his letter, my understanding is we met his questions. There are questions, but we met them in the legislation. That is what I am told.

John Heimann in his letter, of course, took a different view of the subject. Mr. Gilman, you know, it is very difficult for anyone to face up to a change without having gone very deeply into the question, which, of course, we have had to.

It would be wrong to give the banks an unlimited approach into a problem of this sort. The act does not do that. It limits the amount of the participation. The banks are still subject to the routine controls. As was said in Fred Bergsten's letter, you have to follow the traditional rules of banking in evaluating risk, and so forth.

The Treasury testified in favor of this bill, so all I can say to you is, we think we have satisfied the concerns in the latest legislation.

WHY ISN'T BANK EXPERTISE AVAILABLE NOW?

Mr. GILMAN. Mr. Secretary, the apparent objective in having the banks involved is to take advantage of their financial structure and all of their expertise and their advice, and to provide an incentive. I am not certain that I understand why that expertise and advice and ability is not available now to an export trading company—an independent export trading company.

Secretary KLUTZNICK. Well, as a matter of fact, we don't have that many export trading companies.

Mr. Gilman. They tell me there are 400 to 800 or something like that in the country.

Secretary Klutznick. We don't have that many that are not bank risks, ad initium, with or without being export trading companies. That is the difference. We expect to expand this to a point where I think the bank is not only an asset to the company itself, but is an asset to everything we have in mind because a bank has access to a lot of things that a trading company needs.

Mr. Gilman. Why can't that institution be available to the ordinary export trading company?

Secretary Klutznick. I have been both a client and a participant in a bank. Banks have interests in business, and their relationship to those matters is usually more intimate and more careful than the relationship to the casual client.

Now, typically a bank adds a factor of safety to export trading, in my judgment—I am giving you a personal judgment on this—because, one, their presence in it will assure a greater degree of accountability, normally. Their knowledge of foreign markets is very important. Their knowledge of trading practices is important because they are financing them all the time.

Now, of course, it is a departure, as is the change of the antitrust law by certification. But if we mean to challenge the market we are moving into, we need every asset we can possibly put together safely.

IMPACT OF THE LEGISLATION—SIGNIFICANT OR MINOR?

Mr. Gilman. In your mind, is this a substantial challenge or a band-aid on the problem? What we are really trying to do is to improve our balance of trade. Are we going to improve it by just making it easier to become an export trading company, to have a little more financing? Is that really resolving the problem, or is this some of the trimming on the cake that will just assist the present availability of the export market rather than to just provide another vehicle?

Secretary Klutznick. You ask for a qualitative judgment, and that is very difficult for anyone to give. My experience in business is that the more icing you have on the cake, the quicker you can move and the more successful you can be. One of the reasons, among others, that we don't have the export trade today is that we have never made a fetish of export trade. As a matter of fact, it has been contrary to everything we have ever done.

Now, we want to induce more export trade. Therefore, we have to make it possible for an export trading company to know if it goes into operation it will not be prosecuted by antitrust. We have to make it understand that it has access to resources that can be applied properly.

Now, your concern is about the unknown, and I appreciate that. If the administration is sound and the bank behaves soundly, this is important, and I hope they will behave soundly.

Mr. Gilman. I guess my concern is a little deeper than that. I am wondering whether we are really examining the depths of the problem and its root causes or just providing a band-aid to our problems by pursuing this approach.

Secretary **Klutznick**. Let me finish that one because that is our responsibility. He has to negotiate. He has to give us the instruments of relationship. That depends upon how your Department of Commerce operates. If it operates energetically and if it goes after this business and encourages Americans to participate in it, it will not be a band-aid.

If we pass a law and forget about it, it won't happen.

Mr. **Gilman**. Then, Mr. Secretary, are you saying to us that with this vehicle you will now be able to double, triple, or make significant inroads in export trade around the world? Is this the main thrust we are going to follow in order to improve our export trade?

Secetary **Klutznick**. I did not say it was the main thrust. I did say and will confirm it is a very, very vital thrust. It will enable us to commandeer the kind of business sector that we have little access to today. You don't have to tell General Motors or General Electric how to operate in foreign areas.

But there is a little company in your district that is today not doing so well because the market is down. If you give them aid and you give them a trading partner that will open the market for them, they can become effective and profitable not only to themselves but to us.

Mr. **Gilman**. And this will make a significant difference, in your mind?

Secretary **Klutznick**. Over a period of a few years I think it will change the pattern of export trading in America, just as the small and medium-sized companies have become in many ways the most important factor in our economy.

Mr. **Gilman**. In examining the preamble of our legislation, the 10 paragraphs——

Ambassador **Askew**. Mr. Chairman and Mr. Gilman, I wonder if I might add a thought here. It is important to understand that trading company legislation is just one approach to trying to improve our overall trade situation—one that is more than important enough to justify some carefully crafted provisions in the areas of banking and antitrust.

In addition, we are reviewing our industrial policy and capital formation needs. We are reviewing our export incentives and talking about attacking some of the export disincentives. Trading company legislation is a part, an important part, of a broad effort on behalf of exports which the Secretary and I are attempting to lead.

Mr. **Gilman**. This is one of the few legislative initiatives you have undertaken to try to improve our export relationship.

Ambassador **Askew**. We have some things coming up that will be plenty of challenge for you legislatively. What we are saying is that this is the piece which has progressed far enough along to have the best chance in this session. While you can't quantify its potential impact, we know it will expand opportunities to small and medium-sized companies, as we have indicated. To whatever extent it does so, it will help in our overall export efforts. However, it is only one of many approaches.

Mr. **Gilman**. Well, we certainly await the other approaches and look forward to seeing some of the overall programs.

Ambassador **Askew**. Mr. Gilman, we have no monopoly on them. You can introduce some yourself.

[General laughter.]

Mr. **Gilman**. Well, we certainly will be interested in some of your suggestions. We haven't heard about them to date, and I certainly welcome hearing about them.

POWERS OF THE DEPARTMENT OF COMMERCE

Mr. Secretary, in looking over the preamble to this bill, the first 10 paragraphs, these are all powers that your Department has at the present time; is that not so?

Secretary **Klutznick**. I haven't read it since it was written.

Mr. **Gilman**. Let's take a look. The Department has as one of its responsibilities the development and promotion of U.S. exports. The Department has the responsibility of facilitating the export of finished products from U.S. manufacturers. Tens of thousands of U.S. companies produce exportable goods.

Although the United States is the world's leader in agriculture, many farm products are not marketed. Again we have a recitation of facts that exporting services are fragmented, that the United States lacks well-developed export trade intermediaries and export trading companies. There is nothing in here that recites powers you do not have at the present time.

Secretary **Klutznick**. Mr. Gilman, agricultural products are not the immediate province of our department.

Mr. **Gilman**. I don't think this suggests they be made a part of your department. What I am asking is is there any recitation in here of powers your department does not have at the present time?

Secretary **Klutznick**. Well, of course, export trade intermediaries such as trading companies, we don't have that power.

Mr. **Gilman**. Aside from that, you have the other powers.

Secretary **Klutznick**. Well, I want to give an accurate answer. The United States lacks well-developed export trading companies. Well, actually we don't have the power.

DEPARTMENT OF COMMERCE INITIATIVES TO PROMOTE EXPORTS

Mr. **Gilman**. What are some of the initiatives the Department has undertaken in the past 2 years to improve exports?

Secretary **Klutznick**. As far as initiatives are concerned, I don't want to disown any part of the last year and a half. I did not come here prepared to detail what my predecessor did, except that was a period during which the whole reorganization of the Department was taking place. That was a period when the legislation, the attitude of transferring the responsibilities of the Treasury to the Department and the responsibilities of the Secretary of State on commercial attachés was taking place.

During that period I can affirm that there was an undertaking of relationship with industry that we are profiting from today. We are meeting regularly with industry groups trying to find out what their problems are. As Ambassador Askew knows, with some of the troubled industries and special groups he and I are a party to, we are trying very much to do what we can in moving things forward.

There were new trade agreements perfected in the last 2 years. As a matter of fact, the China agreement was perfected by Secretary Kreps, the trade agreement, and other trade agreements. The economic commissions were set up. I have just come back from Poland where we met with the United States-Polish Economic Commission, an instrument and tool which is very constructive in attemping to balance our trade relationships.

Generally speaking, I would say in the last few years prior to my coming on here the tone of the Department has changed and it is more concerned with trade than with other matters, to a point where sometimes I get some criticism from some of our agencies that maybe we are spending too much time on trade. We are finding time enough for all of the family. So that has taken place.

The reorganization plan was approved in January. Since then, we were given some responsibilities, of course, in curtailing certain trade, and that Department on export licensing has been strengthened so that we can monitor the work that we do better.

We have been treating the trade problems in the President's Export Council, and you will have some recommendations as a result of that, I hope, very soon. At least we have agreed on some, in an effort to eliminate disincentives to which Ambassador Askew has referred. We have been meeting with industry groups like steel and autos as participants, both of us, in order to attempt to at least alleviate some of their present problems.

As I have indicated earlier, for the first time we did send a mission in support of an American firm that was seeking a contract, and that has become an available service of the Department. We have completed substantially our reorganization, which was not a minor thing when you have to take over some 65 offices and you have to staff.

That is substantially completed, although we are still short some people and we still have vacancies. All of this has been calculated in the direction of putting in place the kind of attack on trade problems which will enable us to promise and act, which we have not always been able to do.

Mr. Gilman. Thank you, Mr. Secretary, and thank you, Mr. Chairman.

Chairman Zablocki. Apparently the gentleman from New York was out of the room when the Chair commended the Secretary and the Ambassador for the initiatives that have been taken under their leadership in promoting trade. I think the Ambassador and the Secretary could provide an even longer litany of accomplishments.

If there are no further questions, the Chair will take this opportunity, on behalf of himself and all the members of the Foreign Affairs Committee, to thank you, Secretary Klutznick, and Ambassador Askew, for your testimony, and certainly your direct and very intelligent and knowledgeable answers to the questions posed.

We wish you well, and as chairman, with the cooperation and assistance of the subcommittee chairman, Mr. Bingham and his subcommittee members, and all of the members of the Foreign Affairs Committee, we assure you that we will expeditiously consider this legislation.

I had hoped, as I announced earlier, that we would mark up the bill today. But, unfortunately, the time has run out and a rollcall has now been announced in the House.

The Chair will adjourn the meeting, subject to the call of the Chair next week, either Tuesday or Wednesday, to mark up H.R. 7230 as well as other bills.

The committee stands adjourned, subject to the call of the Chair.

[Whereupon, at 12:20 p.m., the committee adjourned.]

EXPORT TRADING COMPANIES

TUESDAY, JULY 1, 1980

House of Representatives,
Committee on Foreign Affairs,
Subcommittee on International
Economic Policy and Trade,
Washington, D.C.

The subcommittee met in open markup session at 10:25 a.m. in room 2172, Rayburn House Office Building, Hon. Jonathan B. Bingham chairman of the subcommittee) presiding.

Mr. Bingham. The Subcommittee on International Economic Policy and Trade will be in order.

The subcommittee meets this morning to formally report H.R. 7230, the Export Trading Company Act of 1980, to the full committee, with amendments. At its June 18 markup the subcommittee completed all action on the bill except for the vote to report it favorably to the full committee. Since that day, the staff has been working to improve the bill from a technical point of view and to carry out the instructions of the subcommittee.

Most of the work has been done on the banking sections which required extensive technical revision to correct inadequate definitions, incorrect cross-references, and unclear provisions. In addition, the bill has been reorganized so as to take a great deal of duplicative material out of titles I and II and combine it into four preliminary sections. In particular, at Mr. Findley's urging, the 33 findings found in the original bills have been reduced to 10 and consolidated at the beginning of the bill, as have several of the definitions and the provisions pertaining to the responsibilities of the Secretary of Commerce. I believe the bill is sounder and tighter now and ready to report to the full committee.

Unless there is discussion or questions of the staff as to the technical changes that have been made, I will entertain a motion that the bill be favorably reported.

I might add that I have been in touch with Mr. St Germain, the chairman of the pertinent subcommittee in the Banking Committee, and assured him that we have no intention of trying to go around that committee. We realize that they have the primary responsibility in the banking area. The same thing, of course, is true with the Judiciary Committee, to which the bill has already been referred. It has been our thinking that we should report out a complete bill containing our thinking, but that does not necessarily mean that we would fight for these provisions against the provisions of the committees with primary jurisdiction in those areas once the bill gets to the floor.

Would any members like to make any comments or questions?

Mr. Bonker.

Mr. **Bonker**. Mr. Chairman, I would like to take this opportunity to commend you and the subcommittee staff for excellent work on this important piece of legislation. I think it has moved expeditiously through the subcommittee. We allowed everyone to participate in the development of this bill. You have taken pains to communicate with other committees that may be involved later on. We have heard extensively from administration witnesses.

I think it is a classic example of how Congress can move expeditiously on an important piece of legislation.

I have had a chance to look at the changes that were incorporated in the final draft that came as a result of our subcommittee markup; they all look in order, and I am very pleased to strongly support this bill.

Mr. **Lagomarsino**. Mr. Chairman?

Mr. **Bingham**. Yes, the gentleman from California.

Mr. **Lagomarsino**. Mr. Chairman, I want to speak in support of the legislation too, and I would like to note that the State of California and particularly the directors of the Office of International Trade and the Department of Food and Agriculture are in full support of the bill, particularly the changes that we have made in adopting the Senate provision relating to State and local government authorities and their jurisdiction, and also the provision that grandfathers existing Webb-Pomerene associations. So, I want to commend the chairman, the other members of the subcommittee and the staff for working out what I think is an excellent bill, one that really will help in the promotion of exports; and that is really what the name of this game is all about.

Mr. **Bingham**. I thank the gentleman. I would like to express my appreciation to the members of the subcommittee, and particularly to the principal sponsor of the bill, Mr. Bonker, for their constructive work on this legislation.

Does anyone want to move that the bill, as amended, be reported to the full committee?

Mr. Pease.

Mr. **Pease**. Mr. Chairman, I will be happy to make that motion and in so doing I, too, would like to commend the chairman and the staff, and especially the principal sponsor, Mr. Bonker, for bringing this legislation before us.

We hear a great deal of concern about the balance-of-trade deficits that our country has suffered over the last several years. I think this is a very concrete step that the subcommittee can take to try to ease that deficit and hopefully reverse it.

With that, Mr. Chairman, I do move that the subcommittee favorably report to the full committee H.R. 7230.

Mr. **Bingham**. As amended. Is there discussion of the motion? If not, those in favor signify by saying "aye."

["Ayes" were heard.]

Mr. **Bingham**. Opposed, "no."

[No response.]

Mr. **Bingham**. The motion is agreed to and the bill will be reported to the full committee for action today.

I thank the members of the subcommittee, and the subcommittee stands adjourned.

[Whereupon, at 10:30 a.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

EXPORT TRADING COMPANIES

TUESDAY, JULY 1, 1980

House of Representatives,
Committee on Foreign Affairs,
Washington, D.C.

The committee met in open markup session at 10:50 a.m. in room 72, Rayburn House Office Building, Hon. Clement J. Zablocki airman) presiding.

Chairman Zablocki. The committee will please come to order.

This morning we meet to mark up two measures reported to the full nmittee by the Subcommittee on International Economic Policy d Trade. H.R. 7230 is the first bill we will consider. The bill directs Secretary of Commerce to encourage the formation and operation export trading companies, and for other purposes.

Last week, as the members will recall, the committee heard testi- ny on the legislation from the Secretary of Commerce, Hon. Philip utznick, and also from the U.S. Trade Representative, Ambassador ubin Askew.

The second bill which we will consider is H.R. 7531, to authorize erations by the Overseas Private Investment Corporation in the ople's Republic of China.

At each member's desk is a copy of both of these bills, and a sum- ry of H.R. 7230. Before we proceed with these bills, the Chair would e to point up an additional measure which has been included on to- y's agenda. It is a draft resolution relating to the U.N. Mid-Decade nference for Women which will convene July 14 in Copenhagen. e Chair hopes the committee will approve the draft resolution today that it may be brought up under unanimous consent before the con- essional recess, and before the U.N. Conference on Women begins. e Chair would of course introduce the draft bill and would invite many members of the committe as desire to cosponsor this resolu- n. A copy of this draft resolution is before each member, with a ief summary.

Does the gentleman from Ohio have a question at this point?

Mr. Pease. Yes, Mr. Chairman, an inquiry. Are we now on the solution regarding the Mid-Decade Conference on Women, or are on the export trading companies?

Chairman Zablocki. We will take up the export trading compa- es bill first; we will take up OPIC next; and the Conference on omen third.

Mr. Pease. Fine. I thank the chairman.

Chairman Zablocki. The Chair would now like to call on the chairman of the Subcommittee on International Economic Policy and Trade, Hon. Jonathan B. Bingham, to explain his subcommittee's recommendations on both H.R. 7230 and after we act on that bill, to also explain the subcommittee's recommendation on H.R. 7531. We will begin, of course, with H.R. 7230, on export trading companies. Mr. Bingham.

Mr. Bingham. I thank the chairman.

The Subcommittee on International Economic Policy and Trade has reported to the full committee H.R. 7230 with an extensive amendment, which appears in the committee print before the members. There is also, as the chairman has stated, a one-page summary of the legislation.

PURPOSE OF H.R. 7230

The purpose of this bill is to promote the export of goods and services from the United States, and I would remind the members that one of the items of jurisdiction of this committee is export promotion. We are all agreed on the importance of the objective. The administration is strongly in support of this legislation. I hope that as far as this committee is concerned the legislation will not be controversial.

There are various parts of this legislation, as I will indicate in a moment, that will have to be reviewed by other committees that have primary jurisdiction. It is not our intention to try to go around those committees; we know they will have to act on these provisions, but we are reporting to you a complete bill with these various provisions included so as, frankly, to stimulate activity and action by the other three committees.

The bill approaches the problem of promoting exports in several major ways:

By directing the establishment of an office in the Commerce Department to promote and encourage the formation of export trading companies and export trade associations;

By providing for bank participation, under strict limits, in export trading companies, in order to make the financial assets and the expertise of the banks more readily available to trading companies;

By providing that DISC and subchapter S tax incentives are available to trading companies and trade associations;

By expanding the antitrust exemptions of the Webb-Pomerene Act to include the export of services; and

By providing that existing Webb-Pomerene associations may apply for and receive certification of the activities for which they will receive an antitrust exemption, thereby providing greater operating certainty.

I stress in that connection the word "may," because they also may simply continue as they now are without certification, if that is what they wish.

Let me speak to the three main issues raised by the bill, because it is important for the members to understand the subcommittee's reasons for recommending this bill to you in this form.

UARDS ON THE ROLE OF FINANCIAL INSTITUTIONS IN EXPORT TRADE

st, with respect to the banking provisions there is, as the mem- know, a long tradition in this country that banking should be ated from commerce.

owever, American export trading companies must compete in orld market against other trading companies from countries with- uch traditions. Therefore, for purposes of improving our export , the bill provides for bank participation in export trading anies.

is participation is strictly limited in ways that are described in l in the summary of the bill, and is subject to scrutiny by the ap- riate bank regulatory agencies in order to insure against abuse. e opinion of the subcommittee, the safeguards in the bill are ade- . But we are all agreed that the Banking Committee, which has expertise than we do, should work its will on these provisions. will encourage it to do so. I might say that I already had a con- ation to that effect with Congressman St Germain.

l members are, of course, free to reserve their positions both on language and the provisions the Banking Committee will report But I urge the members to support the inclusion of the banking isions in order to insure consideration by the Banking Committee.

ANTITRUST PROVISIONS

ith respect to the antitrust provisions we have a similar situation. se will have to be considered by the Judiciary Committee. The ommittee has done the best job it could of providing necessary trust exemptions to permit U.S. companies to join together for poses of their export trade in order to meet foreign competition, hout weakening the antitrust protections in operation here at home. e did not accept the recommendation of the administration in toto. adopted a provision that the existing Webb-Pomerene associations ld be allowed to continue on the same basis as presently, a matter ch they very strongly recommended in the hearings.

he Judiciary Committee will, under the joint referral of this legis- on, now work its will.

TAX PROVISIONS

inally, with respect to the tax provisions we get into another roversial area. I think we should make it clear in the committee rt that if we report out these provisions—and I hope we will— committee is not taking a position on the issue of DISC or sub- pter S benefits as such. Our main reason for including this language gain, to induce the Ways and Means Committee to act on this ject. My own feeling is that, no matter whether one favors or oses DISC, as a matter of consistency and equity it should not be ied to export trading companies as long as it is available to other panies. But the important thing is to get the issue considered in Ways and Means Committee.

INVOLVEMENT OF OTHER HOUSE COMMITTEES IN H.R. 7230

This bill demonstrates in a very concrete fashion what we have always known in theory, that any serious legislative attempt to improve the export picture in this country is likely to involve the jurisdiction of several committees. Because of its overall responsibilities for export promotion, as I have said, I think it is appropriate that our committee take the lead in putting this package together. Now the specific parts of the package must be considered by the other committees.

As I have indicated, we are going to make clear to those committees that we are not seeking to go around them or to usurp their jurisdiction.

I hope we will all be successful in meeting the test posed by this bill, of whether the committees can work together to bring significant export legislation to the floor.

I want to acknowledge the leadership of our colleague from Washington, Mr. Bonker, the principal sponsor of the version of the bill on which we are working, and the hard work and cooperation of the ranking minority member of the subcommittee, Mr. Lagomarsino, who has made real contributions to the bill as you now have it before you, as well as the other members of the subcommittee.

Mr. Chairman, this completes my report. I hope the committee will look favorably on the bill this morning.

Chairman ZABLOCKI. I thank the chairman for his report. Are there any additional comments or questions?

Mr. LAGOMARSINO. Mr. Chairman?

Chairman ZABLOCKI. The gentleman from California, Mr. Lagomarsino.

Mr. LAGOMARSINO. I would like to make a brief statement, if I might.

Mr. Chairman, I strongly support this bill. I think it is a very important part of our effort in trying to stimulate and expand our export activities. There are a lot of other things that need to be done as well and I might submit, as I said in the subcommittee, that it is very difficult to export business, or business products, unless you have the business products to export from this country.

So, I think it is important that all of us in our other roles look at that, too; that we must do what we can to stimulate and not deter business activity here. I think we are all well aware of that.

GRANDFATHERING EXISTING WEBB-POMERENE ASSOCIATIONS

I believe a central issue here is consideration of the merits of Webb-Pomerene associations. It has been my assumption all along that Webb-Pomerene associations offer a valuable opportunity for promoting U.S. exports, and any new legislative efforts should be designed to enhance the value of these associations.

If the result of our efforts were to somehow diminish the effectiveness of existing Webb-Pomerene associations, then we would have defeated the very purpose of this particular piece of legislation, to make such associations better able to serve export promotion.

If we were to say that existing Webb-Pomerene associations should not continue their operations just as they always have, then we would be saying there is something wrong with what they have been doing.

io not believe that is the case. For that reason, I believe it is essential
at we have the grandfather language that is incorporated in this leg-
ation to insure that the existing Webb-Pomerene statutory exemp-
on continues in full force and effect. Those associations would be
quired to continue to file annual reports with the Secretary of Com-
erce, and that would enable them to retain current flexibility, on
hich their members have always relied. It would in no way enlarge
e existing antitrust exemption; therefore, there should be no ob-
ction to it.

I also support the provisions made in this legislation for existing
sociations to apply for certification under this act and that such cer-
fication be automatic. That certification should be simple and flex-
le enough to reflect the principles underlying the original purpose
f the Webb-Pomerene Act. It makes sense for the certification to be
tomatic since those existing associations have already demonstrated
eir successful operation in export promotion. Naturally, an existing
sociation which is automatically certified would be subject to review
nder the provisions of the new law, but the existing Webb-Pomerene
atutory exemption would remain as a protective backup to its
peration.

I strongly support these two provisions.

BANKING PROVISIONS

I might say also, Mr. Chairman, that while Mr. Gilman and I have
rious reservations about some of the banking provisions that are pro-
osed in some of the bills that came before our subcommittee, I do not
ppose consideration of these provisions in this legislation. As a matter
f fact, I think the way the subcommittee and the chairman have
eated these provisions; namely, to essentially pass along what the
enate has done so that the Banking Committee of the House will au-
omatically be entitled to review these, is the right way to go. Then we
an reserve whatever options or opinions we might have on their final
ork product when we see what it is.

I would like to ask unanimous consent, Mr. Chairman, to include
n the record at this point a letter addressed to the chairman of this
ommittee from the director of the Office of International Trade of
he State of California concerning this legislation, and essentially
upporting the bill and provisions therein relating to State and local
overnment authorities in this legislation, and also supporting the
randfather clauses and the automatic certification of the legislation.

Chairman ZABLOCKI. The Chair intended to ask for a similar unani-
nous consent motion immediately after the gentleman finished his
bservations. The Chair would like unanimous consent as the gentle-
nan from California has suggested, to insert a letter of June 30 from
he director of the Office of International Trade, Mr. Richard King,
nd the assistant director of the Department of Food and Agricul-
ure, Mr. Harry Krade, of the State of California, in the record. Is
here objection? The Chair hears none.

The Chair also has received a letter from Hon. George Busbee
n behalf of the National Governors' Association. Governor Busbee
s the chairman of NGA's Committee on International Trade and

Foreign Relations. The letter is dated July 1. Is there objection? The Chair hears none. It will be made part of the record.

[The letters referred to follow:]

STATE OF CALIFORNIA,
WASHINGTON OFFICE,
June 30, 1980.

Hon. CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: As you consider H.R. 7230, the Export Trading Company Act of 1980, we urge your support of two provisions of concern to the State of California which were adopted by the subcommittee last week. Specifically, the state supports the subcommittee language concerning state participation in export trading company activities and that regarding the treatment of existing Webb-Pomerene Associations.

The subcommittee adopted an amendment to include a finding of fact in § 2(a)(8) of H.R. 7230 which states:

> State and local governmental authorities which initiate, facilitate, or expand export of goods and services, can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs.

The foregoing finding is substantially the same as the provision in S. 2718. By adopting a similar position in this version of Export Trading legislation, this committee will endorse the principles of state participation and support a Congressional finding that, in effect, recognizes the essential role of states in foreign trade.

In addition, the state supports the language adopted by the subcommittee which: (1) shifts the administrative functions of the Webb-Pomerene Act from the Federal Trade Commission to the Department of Commerce for those associations which choose to continue under the old Webb-Pomerene Act; and (2) grants automatic certification for those associations which make application for coverage under the new act. The subcommittee's language recognizes the need to protect and support those associations which have been fortunate enough to take advantage of the Webb-Pomerene Act and currently contribute to the national export total.

In conclusion, we hope the committee will adopt the two provisions discussed above.

Thank you for your attention to this important matter.

Sincerely,

RICHARD KING,
Director,
Office of International Trade.
HARRY KRADE,
Assistant Director,
California Department of Food and Agriculture.

NATIONAL GOVERNORS' ASSOCIATION,
Washington, D.C., July 1, 1980.

Hon. CLEMENT J. ZABLOCKI,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN ZABLOCKI: I am writing to you on behalf of the National Governors' Association Committee on International Trade and Foreign Relations, which I chair, to reiterate our support for passage of export trading company legislation. In May, we endorsed S. 2718, Senator Stevenson's trading company bill. While we have taken no position on the various companion bills recently introduced in the House, we would like to recommend that the Senate bill's language be followed where possible during your committee's markup on H.R. 7230. In particular, we regard the Senate bill's "finding" on the state role in export promotion as a reasonable accommodation of concerns raised by state, private-sector, and administration supporters of trading company legislation.

I would also like to express our committee's gratitude for your early cosponsoring of H.R. 7576, the Trade Procedures Simplification Act, which reflects a policy position adopted unanimously by the governors in February.

Thank you for your continuing help and consideration.

With kindest regards, I am,

Yours sincerely,

GEORGE BUSBEE.

Chairman **ZABLOCKI**. Any further discussions? The gentlelady from New Jersey.

Mrs. **FENWICK**. Information, please. Could you point to the section of the bill where grandfathering is mentioned?

Chairman **ZABLOCKI**. The gentleman from New York?

Mr. **BINGHAM**. It is on page 44.

Mrs. **FENWICK**. Thank you.

Mr. **BINGHAM**. Mr. Chairman?

Chairman **ZABLOCKI**. The gentleman from New York.

Mr. **BINGHAM**. The principal sponsor of the bill, Mr. Bonker, had a conflict this morning with another committee. He has a statement prepared in support of this legislation, and I would like to ask unanimous consent that the statement be included in the record.

Chairman **ZABLOCKI**. Without objection, so ordered.

[The prepared statement of Hon. Don Bonker follows:]

PREPARED STATEMENT OF HON. DON BONKER

Mr. Chairman, I want to strongly associate myself with the remarks of my colleague from New York, Mr. Bingham, and personally thank him for moving so swiftly to hold hearings on this important legislation. He must be highly commended for his skillful chairmanship of the Subcommittee on International Economic Policy and Trade.

If there is any doubt about the importance of this legislation, one only needs to look at trade figures for the month of May. These figures show our exports suffering the largest one-month drop since June of 1978 and our trade deficit expanding to $4 billion.

This legislation deserves the overwhelming support of all our colleagues. It is an idea whose time has come. The time has never been better for Congress to exercise some leadership in the area of promoting exports.

With the passage of this legislation, the new export trading companies could become formidable competitors with the incentive and means to create new markets and turn thousands of small and medium-sized American businesses into exporters. Commerce Department studies show that these new companies have the potential to ultimately lift overall U.S. exports by as much as 30 percent.

In my judgment, certain provisions of H.R. 7230 considerably improve S. 2718, the Senate version. For example, we have achieved a better balance between encouraging export trade on the one hand and safeguarding the existing appropriate anti-trust provisions that protect the domestic competitors of export trading companies and export trade associations.

Several witnesses have reported to us—and, I might add, the Senate report somewhat confirms their testimony—that the Department of Justice and to a lesser degree, the Federal Trade Commission, have been perceived by the business community as exhibiting a "thinly-veiled hostility" towards Webb-Pomerene type trade associations. The vagueness of that act leaves uncertain what activities will constitute a substantial restraint of domestic trade. As a result, the threat of anti-trust action has served as a deterrent to broader utilization of the Webb-Pomerene Act and the formation of trade associations for the purposes of promoting exports.

What we have done in H.R. 7230 is to end that uncertainty by including a provision that simplifies and clarifies the elaborate and complicated legal procedures as proposed in S. 2718. If we proceed to replace one set of complicated procedures with another set of complicated procedures, we are not going to have the formation of any more trading companies under the provisions of this act than we had under the provisions of Webb-Pomerene.

By establishing prior certification and simplifying that procedure, by setting precise standards for anti-trust exemptions and by transferring the authority for administering the act from the Federal Trade Commission and the Justice Department to the Commerce Department, we have increased significantly the degree of certainty involved in creating export trade associations or export trading companies for specified export activities.

H.R. 7230 is not a panacea for all our trading ills nor will it solve our export problems overnight. But trading companies are badly needed to help U.S. businesses to compete with foreign trade organizations. This legislation goes a long way towards providing that assistance.

Chairman **Zablocki**. If there are no further questions regarding the bill, the chief of staff will please read the bill. In the absence of the chief of staff, the assistant chief of staff.

Mr. **Ingram** [reading]:

H.R. 7230, to direct the Secretary of Commerce to encourage the formation and operation of export trading companies, and for other purposes.

Short Title. Section 1. This act may be cited as the "Export Trading Company Act of 1980."

Mr. **Broomfield**. Mr. Chairman?

Chairman **Zablocki**. The gentleman from Michigan asks unanimous consent that the bill, H.R. 7230, be considered as read and open for amendment at any point. Is there objection? The Chair hears none.

The gentleman from New York is recognized for a motion.

Mr. **Bingham**. Mr. Chairman, I move that the bill, H.R. 7230, as amended, be reported favorably to the House, with the appropriate instructions of the chairman.

Chairman **Zablocki**. The gentleman from New York has made the motion. Are there any questions? The question occurs on the motion made by the gentleman from New York to report H.R. 7230, as amended. All those in favor signify by saying "aye."

["Ayes" were heard.]

Chairman **Zablocki**. Opposed, "no."

[No response.]

Chairman **Zablocki**. The "ayes" have it unanimously and the bill (H.R. 7230) is reported out favorably, as amended.

[Whereupon, the committee proceeded in other business.]

APPENDIX 1

SUPPLEMENTAL STATEMENT OF MOTION PICTURE EXPORT ASSOCIATION

This statement is submitted by the Motion Picture Export Association of America, Inc. ("MPEAA") as a supplement to the prepared statement and oral testimony of its president, Mr. Jack Valenti, who appeared before the Subcommittee on June 4, 1980. As such, it will amplify on MPEAA's position and analyze more closely H.R. 7436/S. 2718 and other pending legislative proposals to modify the Webb-Pomerene Act.

MPEAA POSITION

As Mr. Valenti emphasized in his appearance before the Subcommittee, MPEAA and its member companies support any legislation which will promote the export trade of the United States. MPEAA has existed for over 35 years and has contributed significantly to the considerable overseas success of the American motion picture industry during that period. MPEAA thus exemplifies the benefits which United States businessmen can derive from export associations, and it believes that the Webb-Pomerene exemption should be available to all others who wish to use it to expand their export trade. MPEAA accordingly approves the pending legislative proposals insofar as they clearly are intended to actively encourage and promote the formation of export trade associations, by extending the Webb-Pomerene concept to the exportation of services, by transferring administration of the Act to the Department of Commerce and by otherwise improving upon present law.

As Mr. Valenti also stressed in his testimony, however, MPEAA is greatly concerned that those exemplary objectives somehow have been subverted during the drafting process. There has been an unexpected rush in recent weeks to report out new Webb-Pomerene legislation, and businessmen suddenly are faced with drafts which have the backing of the Administration, including the antitrust enforcement agencies. (Curiously, these agencies consistently have blocked any amendments in the past and, indeed, have argued for repeal of the Webb-Pomerene Act.) Unfortunately, it is readily apparent upon analysis of the current proposals that the original intention to reaffirm, clarify, and expand export trade legislation once again has been clouded over by those who would limit the availability of the Act.

In fact, the draft bills are so cluttered with inter-agency consultation procedures, paperwork and regulatory red-tape that they clearly will encumber, rather than encourage, the formation of export trade associations. Instead of alleviating industry's concerns about the continuing viability of the Webb-Pomerene concept, the current proposals rather will deter businessmen from seeking the benefits which obviously were intended. In short, the proposed legislation will not achieve its stated purpose, and the disadvantages far outweigh the advantages. MPEAA therefore submits that this Subcommittee should not approve any of the present drafts without considerable further evidence and analysis. Congress should not enact any legislation which would discard the present benefits of the Webb-Pomerene Act.

SOME GENERAL OBSERVATIONS

Before analyzing in more detail in subsequent sections of this statement some of the problems presented by specific provisions of H.R. 7436 and related proposals, MPEAA would call the attention of the Subcommittee to the broader problems created by the differences between present procedures under the Webb-Pomerene Act and those which would apply under the proposed legislation:

1. Under the present law, businessmen who believe they will benefit from such action, are free to form export trade associations and need only file basic information with the Federal Trade Commission to benefit from the immunity. There is no prior review and no permits are required. By contrast, as presently drafted, H.R. 7436 would require a

showing of particularized need and impose a cumbersome certification procedure. Bureaucrats will have every opportunity to second-guess the businessmen involved.

2. Indeed, in the absence of an adequate "grandfather clause," it is not even evident that existing export associations could continue their operations without interruption. For, as Section 8 of H.R. 7436 is now drafted, existing associations would be required to apply for certification, and the section provides absolutely no protection during the period between enactment of the new law and the eventual issuance of a certificate, even if approval is meant to be automatic. Surely such a hiatus is not intentional.

3. Apparently the business community has hesitated to use Webb-Pomerene in the past because of its perception that the Antitrust Division is hostile to the Act. Yet the present proposals would directly involve the antitrust enforcement officials in the certification process and would specifically permit them to block the issuance of a certificate in the event of "disagreement" with the Secretary of Commerce. This will only reinforce existing concerns.

4. Interestingly, the pending legislative proposals purport to provide more certainty as to permissible export activity than presently exists. This is largely

illusory, however, since the drafts do not explicitly adopt existing Webb-Pomerene precedents. They rather call for the promulgation of new "guidelines" which might be used to prescribe what forms of export trade activities or methods of operation will be eligible for exemption. The continuing status of past precedent is thus unclear, and no one will know how the new act will be administered until the new rules are finally adopted and agreed upon by all the agencies involved -- a process that no doubt would require considerable time and effort, affording those who would emasculate the Act still another opportunity to assert their views.

5. Under existing precedent, Webb-Pomerene associations generally may conduct their export trade and engage in export-related activities in accordance with their best business judgment. The only limitations are that they must not restrain trade within the United States, or the export trade of any of their domestic competitors, nor artificially or intentionally influence prices or substantially lessen competition in the United States. If the draft legislation were enacted in its present form, the enforcement agencies might feel that they were free to go beyond this traditional test of domestic spill-over and pose questions about all aspects of an association's business activities. If so, the antitrust officials will want businessmen to do it their way.

6. Flexibility of operation is essential to the success of export trade associations. They must be able to react immediately and efficiently in response to unforeseen foreign market requirements. As Webb-Pomerene presently is interpreted, associations are not precluded from making such adjustments as are necessary so long as they stay within the intent and spirit of the Act. This freedom of movement would disappear under the proposed legislation, since associations would be restricted in advance to a set list of permissible export trade activities and methods of operation as specified in their certificates. Businessmen cannot operate in the real world under such restrictions.

7. MPEAA's central concern is that there is a basic inconsistency in the pending draft proposals. Despite the stated desire to actually encourage and promote the formation of export associations, the bills are so layered in unnecessary substantive and procedural safeguards that the Webb-Pomerene Act would become a bureaucratic nightmare. They would subject export associations to close and continuing regulatory control, in place of the flexible enforcement framework which presently exists. Instead of playing a watchdog role and exercising jurisdiction only in

the event of a substantial adverse effect on the domestic market, the antitrust agencies would be directly involved in the everyday aspects of Webb-Pomerene life.

It appears to MPEAA that this ill-advised attempt to regulate may result from a rushed effort to combine improved Webb-Pomerene legislation with the new concept of the export trading company. Perhaps safeguards are required with regard to export trading companies since they could be created and controlled by banks, and the banking industry traditionally has been heavily regulated. Moreover, the primary function of an export trading company (i.e., buying and selling) does not in itself call for an antitrust exemption. Many, and perhaps most, trading companies may never find it necessary to apply for certification. When they do, more rigorous scrutiny may be required.

The same concerns do not apply and should not automatically be carried over to export associations. MPEAA submits that the situation would be clarified substantially, if these two different concepts were not commingled in one legislative package. Although the titles may be similar, the Subcommittee should consider the "Export Trade Association Act of 1980" on its own merits, separately from the "Export Trading Company Act."

ANALYSIS OF PRINCIPAL PROVISIONS OF H.R. 7436

Purpose and Overall Objectives - The stated purposes of H.R. 7436/S. 2718 could not be more clear and can only be commended.* The draft thus provides:

> "It is the purpose of this Act to encourage American exports by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce." [Emphasis added]

The overall objective obviously is to encourage American exports, and this is to be accomplished by (a) extending Webb-Pomerene to the exportation of services and (b) transferring administration of the Act from the Federal Trade Commission, where it presently rests, to the Department of Commerce. The latter purpose is carried out in Section 7 of the modified Act, which positively directs the Secretary of Commerce to establish a special new Office of Export Trade within the Department "to promote and encourage to the greatest extent feasible the formation of export trade associations. . . ." [Emphasis added]

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* Similarly, the purpose of H.R. 5061 is stated as follows:

> "Sec. 2.(a) It is the purpose of this Act, in order to make United States exporters more competitive with foreign trade associations, to establish an office within the Department of Commerce to encourage and promote the formation of export trade associations organized for the exportation of goods and services, notwithstanding restrictions of Federal and State laws relating to certain business practices and restraints of trade."

Inasmuch as the draft calls for active encouragement and positive promotion of the formation of export associations, it appears entirely appropriate to lodge this task in Commerce, which has as one of its responsibilities the development and promotion of United States exports. Moreover, it has been recognized that:

> ". . . the Department of Justice, and to a lesser extent, the Federal Trade Commission, have been perceived by the business community as exhibiting a thinly veiled hostility toward Webb-Pomerene Associations. . . . [T]he threat of antitrust litigation has served as a deterrent to broader utilization of the Webb-Pomerene Act." Senate Committee on Banking, Housing, and Urban Affairs, Rept. No. 96-735, 96th Cong. 2d Sess., Report on Export Trading Companies, Trade Associations, and Trade Services 14.

No doubt criticism of the Act has contributed to present uncertainties and discouraged some from forming export trade associations in recent years. In MPEAA's view, however, it is hardly surprising to find that an agency, whose primary role is to enforce the antitrust laws, takes the position that any exemptions to those laws should be narrowly construed and grudgingly applied. That is precisely why MPEAA believes that the Commerce Department clearly is better placed to promote the formation of Webb-Pomerene associations and that antitrust officials should not have a direct say in the certification process.

More generally, MPEAA is concerned that the original purpose of Webb-Pomerene has been eroded over time due to uncertainties as to its continuing vigor. For that reason, it is of primary importance for Congress at this time to reaffirm its approval of the use of export trade associations in the strongest possible language. MPEAA believes that Congress could reinvigorate this whole area of law and provide a real impetus to the export trade by enacting legislation which clearly would reconfirm the vitality of the Webb-Pomerene concept as to export trade activities which have no substantial adverse effect on domestic competition.

Definitions - H.R. 7436 would amend the Webb-Pomerene definition of Export Trade so as to include "services exported" in addition to exports of "goods, wares or merchandise." The term "service" itself is defined in a non-limiting manner to cover a broad range of service activities, including "amusement services." MPEAA applauds this expanded definition which will permit the American service industries to fully participate in the export trade. MPEAA also favorably notes that the definition of Antitrust Laws has been broadened to include all State antitrust laws and unfair competition laws. For completeness, consideration also might be given to the inclusion of those provisions of the Robinson-Patman Act which are not part of the Clayton Act.

Eligibility for Exemption/Guidelines - The draft would strike out Section 2 of the Webb-Pomerene Act, which simply states:

> "Nothing contained in [the Sherman Act] shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade . . . or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: Provided, That such association does not . . . do any act which artificially or intentionally enhances or depresses prices within the United States . . . or which substantially lessens competition within the United States or otherwise restrains trade therein."

The draft legislation would replace this straightforward statement of exemption with several longer, complicated provisions. A new Section 2(a) purports to establish the basic standards as to the kinds of "export trade, export trade activities, and methods of operation of any association" which will be eligible for exemption. It first requires that such activities must "serve to preserve or promote export trade," suggesting that the authorities would be able to second-guess the business judgment of the applicant association and its members. It also specifically excludes certain broad categories of activities, set out in separate subsections. Although some of these basically appear to be restatements of existing Webb-Pomerene law, others are new and of questionable desirability.* Subsection (2) confirms that activities would not lose their eligibility for exemption unless they resulted in a "substantial lessening" of domestic competition or a "substantial restraint" of the export trade of any domestic competitor. MPEAA believes that these really are the only limitations that are needed to prevent abuse, but is concerned that the subsection is phrased in terms of "results." This presumably would require the Secretary to make the difficult determination that the prohibited results probably would not occur. It also would permit the antitrust officials to oppose an applicant's eligibility on the basis of pure speculation as to possible adverse results of any contemplated association activity.

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* For example, Subsection (5), would exclude from eligibility "any act which results . . . in the . . . resale within the United States" of goods or services exported. The film prints exported by MPEAA's members have a substantial useful life and, after entering worldwide circulation, occasionally may find their way back to this country or one of its territories. MPEAA really cannot control such occurrences, and surely they should not affect MPEAA's eligibility for exemption.

Subsection (6) for the first time would exclude from eligibility for exemption any activities which "constitute trade or commerce in the licensing of patents, technology, trademarks, or know-how," except as incidental to the sale of goods or the export of services. While it does not believe that it is directly affected by this provision, MPEAA has not seen any explanation of it, and generally questions whether it is necessary to exclude the technology industries in this manner.

The situation is aggravated by the fact that this "Eligibility" section, while creating uncertainty as to the continuing validity of established principles, contains no concrete standards for the future. For it leaves the details of eligibility to be fleshed out in the form of the administrative "guidelines" to be promulgated later. The Secretary of Commerce thus is directed, after consultation with the Antitrust Division and the Federal Trade Commission, to issue guidelines for purposes of determining which "export trade, export trade activities and methods of operation of an association" will be eligible for exemption. The initial guidelines would not be available for at least four months and, thereafter, they would be reviewed and revised periodically.

Although Section 5 provides for public comment on the proposed guidelines, it appears that the authorities, in the final analysis, would have almost total discretion in determining exactly what export associations will be permitted to do and not do. The Administrative Procedure Act specifically does not apply, meaning that these basic ground rules essentially will be established by an informal process. There appears to be no mechanism for reviewing or challenging the guidelines as finally promulgated. MPEAA submits that it is completely unreasonable to permit the administrative agencies to legislate substantive law under the guise of guidelines. They should not be afforded such unlimited discretion to revamp existing law and thus recast the Webb-Pomerene exemption in their own image. In MPEAA's view, Congress should assert its will in a self-sufficient Act, eliminating the need for any "guidelines" which are designed to do more than assist applicants in the planning of their organizations and the preparation of their applications.*

Exemption -- Section 2(b) of H.R. 7436 is the heart of the proposed legislation. It provides that:**

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* As is normal, Section 11 provides for the promulgation of such further "rules and regulations as may be necessary to carry out the purposes of this Act."

** Section 5(a) of H.R. 5061 only provides exemption for the association itself and, further, is completely unacceptable in that it would make the whole association responsible for the misguided independent acts of any of its individual members. Surely, the entire immunity should not disappear merely because one member, without the knowledge or consent of the others, goes off on a frolic or a detour of its own.

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> "[a]n association . . . and its members . . . are exempt from the operation of the antitrust laws as relates to their respective export trade, export trade activities or methods of operation that are specified in a certificate . . ., carried out in conformity with the provisions, terms and conditions prescribed in such certificate and engaged in during the period in which such certificate is in effect." [emphasis added]

There can be no question that the draft legislation would impose rigid new restrictions on the operations of export trade associations and severely limit their flexibility. Section 2 of the Webb-Pomerene Act presently provides that the export trade activities of an association shall not be construed to be illegal, provided there is no domestic spill-over. This generalized immunity now would be turned upside down and replaced by rigid, pre-determined rules of permissible conduct, set out in black and white in a certificate.

As we read it, this proposed language would permit a private party to sue and put in issue the scope of the immunity conferred by the certificate. It is difficult to see how the founders of any association, when starting out, could draft a sufficiently clear and comprehensive set of ten commandments to cover all aspects of its operation for the indefinite future, which would allow it to go about its business unchallenged. There would be continual questions about the proper interpretation of the provisions of the certificate, particularly as applied in new or changing circumstances and, consequently, a risk that parts of its operations might be held by some court to be unprotected. If the specifications are so tightly drawn as to remove all doubt, it would be impossible for any association to fit its day-to-day activities into the prescribed framework. If framed in more flexible terms, there inevitably would be borderline cases and problems which could be raised in private suits. And, if too general, the "specifications" would serve no useful purpose. In this day and age, the danger of private actions would create a greater deterrent to the formation of export associations than the threat of government action ever did.

Flexibility would also suffer in that any material changes in circumstances or resulting operations would require a new application, subjecting the association to again await the outcome of the certification process. It could not proceed in the meantime because, pursuant to Section 4(c), immunity would not attach until and unless the requested amendment was approved.

Webb-Pomerene associations must be able to react immediately in response to the changing requirements of foreign trade. Under the present law, an association is able to take prompt defensive action when threatened by an imminent government edict or confronted with concerted action on the part of a foreign cartel. The association must know that it can counter-move; it cannot be put in a position where it first must go back to the Secretary, nor where it must surmise that the requested amendment eventually will be approved. In short, MPEAA submits that the unwieldly certification system, which is proposed will prove to be completely unworkable.*

Showing of Need -- Section 4 of the draft legislation would require an association seeking certification to file a written application with the Secretary of Commerce. In addition to containing certain basic information about an association and its members, like that presently required under the Webb-Pomerene Act, Subsection (6) would require an application to describe all the:

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* The failure of Congress to establish a certification process when the Webb-Pomerene law was originally enacted was not inadvertent, since it rejected the following proposed amendment at that time:

> "Before any association shall engage in business under this act it shall secure from the Federal Trade Commission a permit to engage in such business, and said Commission is authorized to issue such permits and may, in its discretion, refuse a permit to any association, and may, after hearing, cancel any permit issued." (See the "Silver Letter", Advisory Opinion of the FTC, Aug. 6, 1924.)

> "domestic and international conditions, circumstances, and factors which show that an association . . . and its activities will serve a specified need in promoting the export trade of the described goods, wares, merchandise or services.* [emphasis added]

Before issuing a certificate to an association, the Secretary would be required to determine, after consultation with the Antitrust Division and the Federal Trade Commission,** that the association actually would serve such a specified need.

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* Although H.R. 5061 also provides for certification, it does not require a showing of need.

** The antitrust authorities have a legitimate concern about any possible domestic spill-over, but MPEAA questions whether this is enough to justify their proposed heavy involvement in the certification process. The antitrust officials should not concern themselves with foreign effects for, as the Supreme Court has recognized, "[i]t is clear what Congress was doing [when it enacted the Webb-Pomerene Act]; it thought it could increase American exports by depriving foreigners of the benefits of competition among American firms, without in any significant way injuring American consumers." United States v. Concentrated Phosphate Export Ass'n, 393 U.S. 199, 208 (1968). The Justice Department itself has recently recognized that "a very large proportion of international business transactions involving American firms and/or American markets usually will not involve violations of U.S. antitrust law because such transactions will not adversely affect U.S. consumers or competitors." Guide from the U.S. Department of Justice, Antitrust and International Operations [1977] Trade Reg. Rep. (CCH) (266 Special Reports 5). This view, of course, is not binding on any private plaintiffs, which now may include foreign governments. Pfizer Inc. v. Government of India, 434 U.S. 308, reh. den., 435 U.S. 910 (1978).

The proposed need test would require the applicant association to speculate, and the various administrative agencies to prejudge, the future conditions which would justify an exemption. If events were not exactly as anticipated, the status of the exemption might come into question, leading to the very uncertainty which the proposed legislation is purportedly designed to prevent. Furthermore, the standards for finding need might be difficult to establish. Given the broad range of possible developments, the line between what is really needed and what might merely be preferred, would be difficult to draw.

Finally, the requirement to show a particularized need is entirely superfluous in view of the clear need to expand the American export trade, and thus to encourage and promote the formation of export trade associations, as set out in the Findings of H.R. 7436 itself. It seems safe to assume that American businessmen would not wish to organize an export association and consequently limit their own freedom in foreign markets, unless they themselves felt it would be beneficial to their foreign sales. There accordingly is no reason to require an export association to demonstrate a particularized need to the satisfaction of three different administrative agencies, which surely will have far less understanding of the business involved.

The complicated certification procedure -- The proposed certification procedure is so complex that it inevitably will cause considerable delays. When the Secretary of Commerce proposes to issue a certificate, he must first deliver a copy to both the Antitrust Division and the Federal Trade Commission. Within 15 days thereafter, either of these agencies may notify the Secretary of its intent to offer advice on the determination. The Secretary then must wait 45 days before proceeding. In the event that the Secretary decides to issue a proposed certificate despite "disagreement" by the antitrust agencies, the exemption does not become effective until 30 days after issuance. During that interval, the antitrust agency presumably would bring an action under Section 4(e) for a temporary restraining order. In fact, this gives the antitrust officials an effective veto power over the issuance of a certificate. Few businessmen will wish to wait out these lengthy procedures and incur substantial cost, and still have to go to court to prove their case in the event that their application finally is not approved.

In MPEAA's view, the procedures for the issuance of certificates are so cumbersome, and would require so much paper work and time, and in the end would be subject to so much discretion by the agencies involved, that they will surely discourage many businessmen from ever making an attempt to avail themselves of the benefits of the Act. Such a result is hardly in accordance with the stated purpose of the draft legislation -- i.e., "to encourage American exports by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations . . .."

Existing Associations -- Section 8 of the draft Act is appealingly entitled "Automatic Certification for Existing Associations." Unfortunately, the text of the provision fails to deliver what the title has promised. Although probably unintentional, this is not a true "grandfather clause", since it does not guarantee existing associations the right to continue to conduct their present export businesses without interruption. They rather would be required to file an application for certification within 180 days after enactment of the new law. Although the application evidently would have to be approved, unless it showed on its face that the association was not eligible, the same review procedures and unknown standards appear to apply. The antitrust officials presumably would have an opportunity to express their views, and certification accordingly would not be automatic. Since no Webb-Pomerene protection or other immunity is provided for the interval between the date of enactment of the new law and the eventual issuance of a certificate, the only safe course for existing associations would be to close down their operations in the meantime.

MPEAA respectfully suggests that the following grandfather clause would provide the protection which it believes is intended:

> Automatic Certification for Existing Associations. All existing associations registered with the Commission as provided in the Webb-Pomerene Act, shall be automatically certified on the date of enactment of this Act. The files of all such existing associations shall be transferred forthwith by the Commission to the Secretary, and administrative responsibility in respect of any pending matters regarding any such existing associations shall vest in the Secretary as of the date of enactment of this Act.

Modification to Comply with United States Obligations -- Section 10 provides that the Secretary of Commerce may require an export association to modify its operations so as to be consistent with any international obligations which the United States might undertake by treaty or statute subsequent to certification. The effect of this provision would be to delegate to the Secretary a part of the treaty-making power. As recommended by the

Business Advisory Panel, the question as to the legal effect of the treaty itself should be left to judicial determination.

Task Force Study -- Section 12 provides for review of the revised Act by a special Presidential Task Force seven years after the date of enactment. In MPEAA's opinion, seven years' experience will not be sufficient to permit a useful examination of the benefits which eventually can be achieved. As a practical matter, it seems likely that many may hold back initially to see how others fare under the procedures provided in the draft Act. Moreover, a new association would require a minimum of 5 years in operation before any valid information about its activities would be available. The Task Force therefore will not be able to draw any meaningful conclusions after only seven years. MPEAA submits that ten years would be a far more practical time period in which to evaluate the proposed new legislation.

CONCLUSION: AN ALTERNATIVE

It is apparent from the present legislative effort that there is now a basic realization both in the Administration and in the Congress that this country must do everything it can to expand its export capabilities. All also recognize that this is a matter of utmost urgency, and there appears to be a general consensus that Webb-Pomerene associations could play an important part in this essential national effort. Interestingly, businessmen and lawmakers alike accordingly are urging that the benefits of the Act should be extended to our service industries and that administration of the Act should be transferred to Commerce, which has as one of its responsibilities the development and promotion of United States exports.

For all of the reasons set out above, MPEAA submits that the draft legislation must be simplified and shortened if it is to achieve its intended purpose. As a matter of fact, all of the desired objectives could be achieved promptly through simple amendment of the Webb-Pomerene Act. All that is really necessary is for Congress to make a strong statement of purpose like that contained in H.R. 7436. It then would add the words "and services" after "goods, wares or merchandise" in the definition of "export trade" in Section 1 of the Webb-Pomerene Act, and simultaneoulsy substitute the "Department of Commerce" for the "Federal Trade Commission" in Section 5. The rest of the Act could remain unchanged.

Aside from the simplicity, such a modification would serve as a strong reaffirmation of Congress' support for Webb-Pomerene and thus provide the kind of positive clarification which is called for in the present climate. Such an amendment would achieve the desired purposes and would have the added advantage of preserving the existing interpretations and precedents which have been developed over the years.

Respectfully submitted,

MOTION PICTURE EXPORT
ASSOCIATION OF AMERICA, INC.

Attachment: Report of the
Business Advisory Panel
on Antitrust Export Issues,
January 10, 1979

REPORT OF THE
BUSINESS ADVISORY PANEL
ON
ANTITRUST EXPORT ISSUES

January 10, 1979

RECOMMENDATIONS

1. The Webb-Pomerene Act should be retained at the present time.

2. The Webb-Pomerene Act should cover the export of services.

3. The FTC and the Antitrust Division should use their investigative powers fully to determine whether any Webb-Pomerene associations have a domestic anticompetitive effect, and, where appropriate, action should be taken against any associations which abuse their antitrust exemptions.

4. Consideration should be given to an amendment of the Webb-Pomerene Act along the following lines: At such time as the United States undertakes international obligations by treaty or statute, to the extent that the operations of any Webb-Pomerene associations are inconsistent with such international obligations, the Justice Department shall be authorized to seek a declaratory order from a United States District Court directing that those associations thereafter modify their operations so as to be consistent with such international obligations.

DELIBERATIONS

The Business Advisory Panel on Antitrust Export Issues was created on October 27, 1978, to report to the National Commission for the Review of Antitrust Laws and Procedures. The National Commission is charged with reviewing "the desirability of retaining the various exemptions and immunities from the antitrust laws." The only antitrust exemption relating directly to export is the Webb-Pomerene Act, which grants a limited immunity from antitrust laws to qualifying export associations. Therefore, the Panel's deliberations were focused on the question of whether to repeal, modify or expand the Webb-Pomerene Act.

The Panel held a full-day meeting on November 3, 1978, and again on December 1, 1978. The Panel received considerable material representing differing viewpoints. A list of the materials appears as Attachment B to this report. The Panel also heard oral presentations by representatives of the Department of Commerce and the Antitrust Division of the Department of Justice. The experiences of the members of the Panel in the area of exports and antitrust law also helped.

Because time constraints did not permit a full report by the Panel for the Commission's deliberations on December 7, 1978, a letter summarizing the Panel's recommendations was submitted to the Commission on December 5 (Attachment A to this report).

FINDINGS

The growth of economic interdependence between nations, reflected by increasing exports, imports and foreign investments by all nations, has been dramatic. The United States' increased reliance on imports has put a requirement on U.S. industry, through both exports and investments, to earn abroad the amounts required to balance the payments made by Americans to foreign exporters and investors.

The government should adopt a policy of support for American companies competing in international markets. There need be no basic conflict between such policy objectives and the antitrust objective of promoting competition. Policies genuinely promoting effective international competition by American companies can have beneficial effects on jobs and prices domestically and, by assisting in maintaining a healthy American economy and encouraging U.S. participation in the world market, will have beneficial effects on imports and domestic competition.

The Panel pointed out in its letter of December 7, 1978 (Attachment A), that there existed antitrust export issues capable of having a more significant impact on exports than Webb-Pomerene. While the Panel did not have the time to fully explore these issues or reach any conclusion, a separate statement on these issues by Panel members Beshar, Dabney, Kennedy and Valenti is included as Attachment C to this report.*/

Although there are many steps which might be taken by the U.S. Government to foster beneficial export activity, the Panel's mandate is limited to consideration of the existing antitrust exemption in the export area -- the Webb-Pomerene Act. This Act was designed to allow American firms, particularly smaller firms, to join together in their exporting activities without fear of prosecution under antitrust law. It was aimed particularly at allowing U.S. firms to operate on an equal plane with foreign cartels which were either competitors or customers.

The Act has had but limited success, witness its use by only a small and decreasing percentage of exporters. Presently, Webb-Pomerene associations only account for about 1-1/2% of total exports.

On the other hand, the Act is felt to be of importance to several industries, such as the movie industry. These industries have not only had to compete with or sell to foreign cartels, the original concern of the drafters of the Act, but increasingly have had to compete with or sell to foreign governments favoring their own interests.

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*/ Panel member Hawk concurring generally.

These governments have sought to impose discriminatory taxes, to require the uneconomic use of local industries or interests and to take numerous other steps which exploit the foreign governments' superior bargaining position over American companies operating individually abroad. The Webb-Pomerene Act allows American industries, by taking joint action, to deal more effectively with these foreign governments. The Act also allows American companies to share the rapidly escalating costs of bid preparation, market analysis, financing, and risk-taking in the international market. Thus, the Act appears to serve its intended purpose in some industries.

On balance the Act probably has a desirable impact on American export activity and on the present balance of payments problems. The argument made by some that the Act is not having any of its intended beneficial effects must be rejected.

Similarly, arguments that the industries using the Act could function outside the Act without risk of antitrust liability or that the industries could rely instead upon the Justice Department's business review process do not seem supported by the record. The activities of most export associations may be lawful under the antitrust laws, independent of their Webb-Pomerene status;

owever, the Act provides a certainty of antitrust immunity hich is necessary in order to proceed on many transactions, greements, or other actions designed to increase exports. e Antitrust Guide for International Operations is a helpful tep in resolving questions on many types of export activity nd should be periodically edited and more widely distributed. owever, the Guide alone does not and can not cover many omplex and difficult situations which often concern xporters.

It is also hoped that efforts to bring about closer ommunications between the Antitrust Division and the rivate antitrust bar will be continued. However, the usiness review process has not shown itself to be an dequate substitute for Webb-Pomerene. First, the process s viewed to be time consuming. Many overseas projects nd negotiations cannot await the apparent delay inherent n obtaining an adequate business review letter in a omplex situation. Second, the receipt of a business review etter does not protect the recipient from a private anti-rust action or from a change in government policy resulting n prosecution. Third, business review letters have not istorically been general enough to cover the many possible roblems which an industry may face in its efforts to stablish or maintain an export market. Thus, while the usiness review process is useful in some cases and should be expanded, it cannot presently be deemed an adequate replacement for the Act.

The two principal arguments which have been raised for repeal of the Act are the following: (1) Webb-Pomerene associations, because they generate constant communications and agreements between competing companies, tend to foster anticompetitive "spillover" effects within the United States. (2) The existence of the Webb-Pomerene Act makes it more difficult for American negotiators engaged in international negotiations to obtain bilateral and multilateral international agreements prohibiting or discouraging anticompetitive cartels in the world market.

The evidence presented to the Panel to support these two arguments was not sufficiently compelling to justify repeal of the Act. Because these arguments have been raised often by the Antitrust Division, representatives of the Division were asked to present evidence to the Panel in support of their arguments. Oral presentations were made by Doug Rosenthal, Chief of the Foreign Commerce Section of the Antitrust Division of the Justice Department, and Joel Davidow, Director of Policy Planning at the Antitrust Division.

With respect to the Act's potential domestic anticompetitive spillover effect, where solid evidence of such an effect can be found, the Antitrust Division or the FTC has the power to bring an action to enjoin the association's anticompetitive conduct and punish the offenders. The Act itself declares that the antitrust exemption applies only where the association does not restrain the export trade of any domestic competitor of the association, and that the association cannot enter into any agreement, or do any act that artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein. A few actions against Webb-Pomerene associations have been brought in he past, but there may be a need for more vigilant oversight. Accordingly, the elimination of the Act, which is benefitting some American industries, cannot be justified y suspicions of a spillover effect. The economic and arket impact of these industries can be more closely crutinized. Where evidence of a spillover effect exists, vailable remedies can be used.

With respect to the Act's potential inhibiting ffect on negotiations, the Panel was presented with epresentations that, in certain negotiations at the nited Nations on the subject of codes of international business conduct, the existence of the Act has hampered the ability of American negotiators to obtain agreements from foreign countries to terminate their unfair business practices and support international codes of business conduct. However, the Act's existence was not shown to be more than one of many obstacles to these negotiations. Foreign governments are aware that treaties negotiated with foreign nations and ratified by Congress would be controlling as to Webb-Pomerene associations. Unilateral repeal of the Act would not be likely to improve the United States' ability to negotiate for pro-competitive concessions from foreign nations. If necessary, any real embarrassment or inhibition to negotiations caused by the Act could be overcome by adding language to the Act clearly stating that any conduct prohibited by bilateral or multilateral obligations undertaken by treaty or statute would not be protected by the Act.

Satisfactory solutions are therefore available for the two problems raised by those seeking repeal of the Act. Repeal of the Act at this time seems an overly broad solution which would destroy unnecessarily the benefits thought to be derived from the Act. Limited though they may be, these benefits should be retained.

There has been increasing support for a proposal to modify the Act to make the Webb-Pomerene exemption dependent upon a showing of need or "good cause." There is much to commend a needs test. A requirement to show good cause could assure that the benefit of antitrust exemption would be extended only in those cases where such an exemption was necessary to assure the ability of American companies to compete and operate successfully in the world market.

There are several problems with a needs test. First, it might require the proposed association to speculate and the administering agency to judge the future conditions which would justify an exemption. If conditions were not exactly as anticipated, the status of the exemption might come into question, leading to the very uncertainty which the Act is designed to prevent. Second, standards for finding need might be difficult to establish. As the wide variety of different situations present themselves, the line between what is needed and what is merely preferred might be difficult to draw. Finally, attempts to impose strict limitations on the type of export-related activity which might be undertaken by an association could destroy the flexibility which is important in the successful operation of such associations. Absent further research, a needs test would appear to be procedurally and substantively difficult to draft and to administer.

There has also been increasing support for extension of the Act to include services. Services are an increasingly important form of export and a large percentage of exports today are projects involving both goods and services. No one has argued that the Act should not include services to the same extent as goods, and there is no logical reason to exclude services from the coverage of the Act. The Act should thus be extended to include services. The Antitrust Division has advised previously that it is unlikely that the Act now covers services. The Panel is not in a position to reach any conclusions on such a legal issue. However, the Act should be interpreted to include services if possible, or if necessary, the Act should be amended to specifically include services.

CONCLUSIONS

The increased market interdependence between nations is causing profound consequences for the United States. To maintain our domestic economy, American industry must increase its participation in world markets. We must devote more effort to exports. The Webb-Pomerene Act is felt to assist exporters, albeit in a very limited way, by removing the threat of antitrust litigation from the list of factors which inhibit export activity. Until better solutions are offered the Act should be retained and should be extended to cover services, an increasingly important form of export.

The alleged adverse side effects of the Act should be met head-on. If there is domestic anticompetitive spillover, it should be uncovered and terminated. If there is foreign disapproval of Webb-Pomerene exemptions, bilateral treaties removing both the exemptions and the circumstances which necessitate the use of those exemptions should be negotiated.

APPENDIX 2

Supplemental Statement of the Phosphate Chemicals Expor Association, Inc.

We are grateful to the Committee for this opportunity to present at greater length our views on the export trade legislation proposals currently pending before it,[1] and, in particular, those portions which would affect the present antitrust exemption for export trading companies as set forth in the Webb-Pomerene Act.[2] As noted in the oral presentation of William H. Rohrer, we wholeheartedly suport the efforts of this Committee to extend the benefits of the Webb-Pomerene exemption to cover services, and to widen the area of certainty within which associations operate.

Our particular concern, however, is that the proposed language in the various bills before the Committee might well narrow the scope of the present exemption, inadvertently imposing unwarranted rigidity on the operation of Webb-Pomerene Associations and -- most seriously -- potentially jeopardizing the operations of existing Associations. At a minimum, we believe that a true grandfather clause which would automatically continue the present Webb-Pomerene exemption in full force and effect for existing associations, is essential to protect and ensure their continued successful operation.

In this written statement we will explain at greater length why the present wording of the various bills -- and, in particular, the wording of Title II of H.R. 7436/S. 2718 which is supported by the Administration -- is inadequate to meet our concerns. These are best understood in the context of the rationale for the present Webb-Pomerene Act, and the history of recent efforts to change it.

Rationale of the 1918 Export Trade Act - Equally Applicable Today

The present Webb-Pomerene Act was in large part the outcome of an exhaustive study undertaken by the Federal Trade Commission shortly after its own active formation in 1915. In a 1916 report to Congress, the Commission observed that American exporters were encountering overseas combinations of producers, dealers and purchasers and concluded that there would be tangible advantages in encouraging cooperative efforts in American export trade.

The words of 1916 hold equal force for the export markets of today where U.S. producers encounter legalized cartels, socialized industries, state-owned competitors and purchasers and other economic entities enjoying greater than arm's length support from their host governments:

> "If Americans are to enter the markets of the world on more nearly equal terms with their organized competitors and their organized customers, and if small American producers and

> manufacturers are to engage in export trade on profitable terms, they must be free to unite their efforts.
>
> "Without any export organization, foodstuffs and raw materials can readily be sold at some price, but to avoid needless expense in distribution, to meet formidable foreign buying organizations, and to insure profitable export prices, cooperation among American producers of such commodities is desirable.
>
> "In the sale of factory products, cooperation is even more desirable. Such goods must be advertised, demonstrated, and a market created abroad, often in the face of the keenest competition from great combinations of foreign manufacturers. Obviously only strong organizations can undertake this contest. If groups of American manufacturers and producers, either of competing or of noncompeting goods, can combine their efforts, they can share the cost of developing new markets, establish themselves firmly, extend credit more readily to foreign customers, and compete more successfully with foreign syndicates and cartels."1/

On the basis of the FTC study, Congress determined after lengthy and exhaustive debate that a limited statutory antitrust exemption was appropriate to encourage cooperative effort. Arguments as to whether existing antitrust laws would actually bar such cooperation, or whether the exemption was technically unnecessary were considered and rejected:

> "It is not the purpose here to make a legal argument upon the question whether our existing antitrust laws do or do not permit the things authorized to be done by this bill. The Federal Trade Commission after a careful study of trade conditions has not been able to give clear assurance to the exporting interests that the formation of common selling agencies for the foreign trade, by contract, made between different manufacturers or producers would not come

> within the prohibitions of existing law. Sufficient doubt exists in the minds of those engaged in this trade to prevent them from undertaking it, and the practical effect is the same as if it had been settled that such organizations are prohibited by existing laws."[4]

Again, the words of the past are equally cogent today. Despite recent statements by the Justice Department's Antitrust Division that the Webb-Pomerene exemption is mere surplusage and that "no legislation is needed to create an antitrust exemption for trading companies,"[5] this is simply the view of one administration agency, not the law of the land. It does not address the problem of private parties, and public foreign entities,[6] who may choose to bring suit. As the Division's recent Foreign Commerce Chief has admitted,

> "We have stated in the Guide [Antitrust Guide for International Operations] that where there are truly no effects in commerce or effects injuring United States persons, we do not see that it is an appropriate case for the exercise of United States jurisdiction. But we have also conceded that this is a question which has not been precisely addressed by the Supreme Court and it is possible that our view will not be the law if and when the Supreme Court addresses the question."[7]

Since its enactment, the Webb-Pomerene exemption has been the subject of several careful public reviews. Previous Congresses have considered bills which would have changed and narrowed its scope, and decided not to enact them.[8] An exhaustive study was made in 1955 by a special Attorney General's Committee to Study the Antitrust laws.

It concluded that the Webb Act was of benefit, and ". . . that the act may well be retained until facts are adduced to show some changes in the present pattern abroad of state controlled buying agencies, state monopolies, and other combinations now part of the cartel policy prevalent in many parts of the world."[9/]

Efforts by the Justice Department to Eliminate or Narrow the Act

Despite the fact that U.S. exporters still encounter foreign combinations of market power -- both buying and selling -- which with the frequent support and encouragement of host governments thwart the efforts of U.S. exporters to market U.S. goods and obtain the best possible price, the Antitrust Division of the U.S. Department of Justice has consistently opposed retention of the Webb-Pomerene exemption. As the recent Chief of its Foreign Commerce Section Douglas Rosenthal observed at an International Trade Seminar "I think you all appreciate that the Justice Department is not the greatest defender of the Webb Association."[10/]

Prior to its most recent participation in the framing of H.R. 7436/S. 2718, the Justice Department's efforts to eliminate or narrow the exemption most recently manifested themselves in connection with the deliberations of the National Commission for the Review of Antitrust Laws and Procedures (the "NCRALP"), a body chaired by then-Assistant Attorney General John Shenefield (head of the Department's Antitrust

Division), and staffed by personnel from the Department.

The NCRALP was given a wide-ranging directive to review procedural and substantive rules of law and "the desirability of retaining the various exemptions and immunities from the antitrust laws. . . ."[11/] It quite obviously could not review all exemptions in depth, and therefore chose to concentrate on insurance and trucking. Actual hearings on the Webb-Pomerene exemption lasted about two hours, and only three witnesses testified.

Largely as a result of concerns expressed by the Commerce Department and others that the NCRALP was giving inadequate attention to export issues, President Carter named a Business Advisory Panel on Antitrust Export Issues (the "Advisory Panel") on October 27, 1978. The Advisory Panel devoted its full attention to the Webb-Pomerene exemption. Among those who testified were representatives of the U.S. Department of Justice, who argued for outright repeal of the Webb-Pomerene Act.[12/]

After full consideration, the Advisory Panel concluded that while the Webb Act had enjoyed only limited success, it was of considerable importance to several industries and served its intended purpose in that context.[13/] The Advisory Panel conclusively rejected the argument that the Webb-Pomerene Act was not having any of its intended beneficial effects, and in the end, it was not convinced by the arguments of Justice Department representatives that the exemption should be repealed:

> "'I hear you, but I don't know if I agree,' former Federal Trade Commissioner Mary Gardner Jones told Mr. Rosenthal [Department of Justice Antitrust Division Foreign Commerce Chief]. She said she kept on hearing theoretical arguments but little real evidence of abuse."[14]

The Advisory Panel decided that there were safeguards enough in the present statute against antitrust violations.

Largely because of the recommendations of the Advisory Panel, attempts to secure an NCRALP recommendation for outright repeal of the Webb-Pomerene Act were not realized, and the NCRALP final report prefaced its analysis of Webb-Pomerene with the caveat that it "was not able to examine these issues at length" and recommended further study.

Despite this recognition -- and the strong supportive statement of the Advisory Panel -- the overall tone of the NCRALP report was strongly negative and suggested that there be "a legislative reexamination of the necessity of such an exemption" and that, if retained, any reformulated immunity "be made contingent on a showing of particularized need." Elsewhere, the NCRALP report stated that "the burden of proof justifying special treatment ought to be on those seeking such treatment."[15]

Significantly, not all members of the NCRALP concurred in this report. In his separate views which were filed with the Commission Report, Senator Javits argued that inadequate attention had been given to antitrust export issues. Commenting on the proposed requirement that applicants show a "particularized need", the Senator from New York stated that "in my view, if we adopt these recommendations for substantive and procedural change, we will lessen, rather than increase, the vitality of competition in the marketplace."

Senator Javits' separate remarks supported the approach of the Advisory Panel, which "recommended that we not only continue the Webb-Pomerene exemption, but that we expand it to include services." Moreover, he observed that

> "If individual applicants were required, let us say, to make this showing to the antitrust enforcement agencies -- I think the Webb-Pomerene exemption would become quickly moribund. However, should Congress conclude that such amendment to the Act is advisable, I would urge that Congress make clear that this review be made by an agency of the Executive Branch with broader concerns (i.e., international trade and international monetary issues) than antitrust enforcement. Such an agency would be more likely to consider the President's stated objective of increasing U.S. exports and more considerate of the problems encountered by U.S. business in international trade."[16]

The Senate Bill

In early 1979, Senator John Danforth, joined by Senators Bentsen, Javits and Mathias, introduced S.864, the provisions of which ultimately were modified to become Title II of H.R.7436/S.2718. On September 18, 1979, they testified before the Senate Subcommittee on International Finance of the Committee on Banking, Housing and Urban Affairs, and unanimously stated that the purpose of the bill was to expand the Webb-Pomerene Act's coverage, transfer its administration to the Department of Commerce which would be charged with promoting the formation of export trade associations and preclearing them for broadened antitrust immunity for acts within specified guidelines. The role of enforcement agencies in the certification process was to be advisory only, although S.864 did authorize them to challenge the certification once granted.*

Totally absent from the bill or the statements of its sponsors was any indication that a showing of "particularized need" or any other stringent justification had to be made in order to obtain the benefits of the exemption. Far from calling for a reexamination of the Webb-Pomerene exemption, S.864 proceeded from the premise that the exemption was necessary but for some reason was not being utilized to its fullest potential. Indeed, one of the frequently cited reasons for this situation was the perceived hostility of the U.S. Justice Department. Nevertheless, in oral testimony, a representative of the Department of Justice characterized the bills as containing a justification requirement, stating

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* Bills were also introduced by Senators Roth and Inouye, reflecting the same general goal of broadening Webb-Pomerene utilization.

> "We do support that portion of two of the bills that would require particularized need showing by applicants for antitrust exemption. Applicants should have to come in and explain what it is about the way they propose to [operate] that would be questioned and for which [there is] need for an exemption."[17]

This position was echoed by the Federal Trade Commission representative who argued that "the Subcommittee should give serious consideration to proposals that provide for a limited certification -- and immunity -- based on a showing of need."[18]

Both Justice and the FTC did not address the fact (as found by the Advisory Panel) that existing law provides fully adequate protection against anti-competitive impact in the domestic market or on domestic competitors -- protection which was to be continued by the pending bills. Rather, efforts were pressed to inject the enforcement agencies into the formative certification process, so that the creation of new Webb-Pomerene Associations could be blocked ab initio.

In the full Committee markup held on May 12, 1980, provisions were inserted requiring that any certification and antitrust immunity be contingent on a showing and determination of "specified need", and that Webb-Pomerene operations be confined within "specified" permissible activities listed in the certificate.[19] The full Committee report which accompanies S.2718 states that Title II thereof provides antitrust immunity

> "only when: 1) the proposed export activities are determined not to be in violation of specified antitrust standards; 2) there is an established need for the immunity; and 3) the association or company successfully completes the certification process required in the bill."20/

Most significantly, the final S.2718 markup also granted a last minute Administration request to allow either the Justice Department or the FTC preliminarily to block certification and immunity by way of court action on the basis of hypothetical arguments that a prospective Association might violate standards of the Act, or is not "needed" to preserve or promote export trade.21/

The Proposed Legislation May Discourage Formation of New Export Associations

After reviewing the track record of the enforcement agencies on legislation relating to Webb-Pomerene, there can be little doubt but that the language of the current bill supported by the Administration (H.R. 7436/S. 2718), if enacted, may well be used in efforts to discourage the formation of export trade associations. There is no guarantee that the preliminary injunctive power granted these agencies in the certification process will not be utilized as a means of insisting that a "particularized need" be proven. Moreover, subtle changes in the language of the bill describing the exemption could well be used as an additional vehicle to narrow the exemption. The uncertainties these changes introduce are compounded by further provisions under which future guidelines, which may serve as additional barriers to certification, will be promulgated.

These aspects of the bills raise grave questions as to whether the legislation will achieve its intended purposes of (1) dispelling business perceptions of "thinly veiled hostility" on the part of enforcement agencies and (2) encouraging formation of new export trade entities.[22/] Prospective new export ventures may well be discouraged by the increased amounts of red tape, the likelihood that enforcement agencies may intrude in the process to second-guess the determination of businessmen that there is a need for the entity they propose to form, and the rigidity of limitations to "specified" certified activities.

In his oral testimony, Mr. Valenti of the Motion Picture Export Association, argued that the proposals before this Subcommittee are too complex, and that in order for Webb-Pomerene Associations to succeed, the exemption should be kept as simple as possible. We would support any amendment to the proposed bills which would simplify the procedures for obtaining the Webb-Pomerene exemption and, in particular, would strongly suggest that the Subcommittee consider modifications which would keep the present benefits of the Webb-Pomerene Act intact for all, extend its coverage to services, and transfer its administration to the Department of Commerce.

Minimum Requirement: A True Grandfather Clause

Our very practical and immediate concern, however, is the absence from all bills of a true grandfather clause which would automatically continue the present Webb-Pomerene exemption in full force and effect for existing Webb-Pomerene associations. As Mr. Rohrer testified in his oral presentation, anything short of continuation of present Webb-Pomerene immunity unnecessarily and unjustifiably threatens our existence -- and inequitably jeopardizes the substantial investment of time, money and foregone opportunities which our Members made in reliance on the continuation of the Webb-Pomerene framework of statute and case law in existence since 1918.

The current bill supported by the Administration does not contain a real grandfather clause. Indeed, although Ambassador Hormats in oral testimony stated that Section 8 of H.R. 7436/S. 2718 would take care of the concerns of existing associations, he then went on to qualify his testimony by stating that "most, if not all, [existing associations] could be certified under that section."[23/] The uncertainty which Mr. Hormats' qualification reflects is, of course, precisely the ambiguity which causes our deepest concern.

In point of fact, Section 8 of H.R. 7436/S. 2718 is not an automatic continuation of the status quo, but requires existing associations to file an application for certification and go through the same process to which new entities must submit. Although their application is to be granted "unless such application shows on its face that the association is not eligible for certification under this Act,"[24/] this is no guarantee against challenge by the enforcement agencies based on hypothetical arguments that an application is on its face involved. And there is no provision against suspension of antitrust immunity during the application process and any challenges to certification.

Merely making certification automatic for existing Associations does not, under the present proposals, alleviate our concerns. The criteria which would be applied to existing associations are different from the ones under which they currently operate. As noted in the Committee report, S.2718 (H.R. 7436)

> "adds two new substantive standards, requested by the Department of Justice, to the Webb-Pomerene Act -- a requirement that the export trade must not constitute trade or commerce in the licensing of patents, technology, trademarks or know-how, and that the export activities must serve to preserve or promote export trade."[25/]

These new standards might well provide the vehicle for a challenge at any time to the continued operations of existing associations simply because they are "commercially unnecessary" or not the "least anticompetitive alternative," despite the fact that commercial judgments are better left to businessmen, and that the existing provisions of the Webb-Pomerene Act adequately guard against antitrust abuse.

In addition to the new "need" standard, other subtle changes in bill language shift the focus of precluded anticompetitive domestic impacts from "intent" to results.[26] The current exemption allows export trade activities provided they do not "artificially or intentionally" affect U.S. prices,[27] standards which businessmen can understand and comply with. The new bills would preclude acts which "unreasonably" affect U.S. prices[28] -- a standard which provides considerably less guidance to the businessman.

We fear that these subtle changes could substantially chill the good-faith operations of export trade associations. The leading Court decision construing the present Webb-Pomerene Act has held that

> ". . . it may very well be that every successful export company does inevitably affect adversely the foreign commerce of those not in the joint enterprise and does bring the members of the enterprise so closely together as to affect adversely the members' competition in domestic commerce. Thus every export company may be a restraint. But if there are only these inevitable consequences an export association is not an unlawful restraint. The Webb-Pomerene Act is an expression of Congressional will that such a restraint shall be permitted. And the courts are required to give as ungrudging support to the policy of the Webb-Pomerene as to the policy of the Sherman Act."[29]

Although the Senate Committee report states that "The substantive law of antitrust as modified by the Webb-Pomerene Act has not been altered,"[30] different statutory language coupled with the avowed goal of enforcement agencies to limit the use of statutory exemptions, inevitably injects an element of uncertainty as to the continued viability of existing case law.

Finally, the proposed legislation would deprive existing associations of the flexibility to respond to new export market situations which the current Webb-Pomerene Act affords. Terms of the statutory exemption notwithstanding, additional -- and at this stage unpredictable -- administrative guidelines would limit an association's freedom of operation. Since operations of a certified association would be confined to the "specified" activities and methods of operation contained in a certificate, new marketing problems would either have to await amended certification via a cumbersome administrative process before solution or require that an association respond at its peril. In short, deprived of the certainty of a statutory exemption, export trade associations would face the new uncertainty of whether a proposed export trade action was within the terms of certification (and hence exempt) or outside the terms of a certification (and therefore subject to full antitrust liability).

For all of these reasons, we believe it is essential for the continued viability of existing Webb-Pomerene associations that any enacted legislation contain a clear and unambiguous grandfather clause which, unlike Section 8 of H.R. 7436/ S. 2718, accomplishes the following:

1) Continues the existing Webb-Pomerene statutory exemption in full force and effect for present associations, provided they continue to file annual reports with the Secretary of Commerce. This would insure that all present associations will retain the current flexibility, on which their members relied before investing time and resources; and as it would not in any way enlarge the existing antitrust exemption, it would seem fairly free from objection.

2) Additionally provides that existing associations may also apply for certification under the provisions of the new Act, which certification -- in view of their demonstrated successful existence on the export marketplace -- would be automatic. An existing association automatically certified under this provision would, of course, be subject to review under the provisions of the new Act, but the existing Webb-Pomerene statutory exemption would remain as a protective backup to its operations.

As noted in our oral testimony, we believe that the goals which underly the various export trade proposals now before this Subcommittee are laudable, and we fully support those positive actions which would expand the exemption to include services and vest administrative responsibility in the Department of Commerce where its benefits can be better promoted. We believe, however, that the success of the past provides the best foundation on which to build for the future. We are therefore hopeful that the Subcommittee will clarify the proposals currently before it with an unequivocal grandfather provision assuring the continued successful operation of existing Webb-Pomerene Associations.

FOOTNOTES

1/ H.R. 5061, H.R. 7230, H.R. 7310, H.R. 7364, H.R. 7436 H.R. 7463, and related bills.

2/ Export Trade Act of 1918, 15 U.S.C. §§ 61-65.

3/ Report on "Cooperation in American Export Trade" (Two Vols., 1916) Vol. I, p. 8. Quoted in Senate Temporary National Economic Committee, 76th Congress, 3d Session, Monograph 6 "Export Prices and Export Cartels (Webb-Pomerene Associations)", pp. 116-117 (1940).

4/ House Committee on the Judiciary, Report No. 118, "Promotion of Export Trade, Etc." to accompany H.R. 17350 (64th Congress, 1st Session, 1918), p. 1.

5/ U.S. Senate Hearings before the Subcommittee on International Finance of The Committee on Banking, Housing and Urban Affairs on S. 864, 1499, 1663 and 1774 (96th Congress, 1st Session, 1980) (hereinafter "Hearings"), p. 137.

6/ See, e.g., Pfizer, Inc. v. Government of India, 439 U.S. 308 (1978).

7/ Fifth Annual Fordham Corporate Law Institute, International Antitrust (1979), p. 340.

8/ See, e.g., H.R. 4493 (78th Congress, 1st Session, 1944), (to repeal the Webb Act), H.R. 5041 (81st Congress, 1st Session, 1949) (to amend Section 2 to prevent an association from being exclusive export sales agent of its members), H.R. ____ (81st Congress, 2d Session, 195o) (to restrict membership in an association to no more than 30 per cent of an industry and requiring extensive reports).

9/ The Attorney General's National Committee to Study the Antitrust Laws, Report (1955), pp. 113-114.

10/ Fordham Corp. Institute, loc. cit.

11/ Exec. Order No. 12022, § 2(a)(2), 3 C.F.R. 156, as amended by Exec. Order No. 12052, 43 Fed. Res. 15,133 (1978)

12/ See Bureau of National Affairs, Antitrust & Trade Regulation Reporter (No. 892, 12/7/78), pp. 16-18.

13/ Report to the President and the Attorney General of the National Commission for the Review of Antitrust Laws and Procedures (1/22/79) (hereinafter "NCRALP Report", Vol. II "Report of the Business Advisory Panel on Antitrust Export Issues," p. 291 at 293-294.

14/ Advisory Panel Hearings as reported in The Journal of Commerce (12/4/78) at p.3.

15/ NCRALP Report, Vol. I at pp. 295-306.

16/ NCRALP Report, Vol. I at pp. 385-401.

17/ Hearings, Testimony of Ky P. Ewing, p. 176.

18/ Id., Statement of Daniel C. Schwartz, p. 203.

19/ S. 2718, §§ 2(b), 4(a)(6), 4(b)(1).

20/ Senate, Committee on Banking, Housing, and Urban Affairs, Rept. No. 96-735 (96th Congress, 2d Session,1980), "Report on Export Trading Companies, Trade Associations and Trade Services" (hereinafter "Senate Report") at p. 15 (emphasis added).

21/ See S. 2718, §§ 4(b)(1), 4(e)(2); see also 5/12/80 letter from Secretary of Commerce Philip W. Klutznick to Hon. Adlai E. Stevenson, reprinted in Senate Report at p. 28.

22/ See Senate Report at p. 14.

23/ Subcommittee on International Economic Policy and Trade, House Committee on Foreign Affairs, Oral Testimony of Ambassador Robert Hormats, Deputy U.S. Special Trade Representative (6/5/80) (transcript unavailable) (emphasis added).

24/ S. 2718, § 8.

25/ Senate Report at p. 17.

26/ The change is from the current Webb-Pomerene Act language which precludes acts which "are" in restraint of trade (e.g. 15 U.S.C. § 62), thereby incorporating understood case law concepts of intent or "scienter",to acts which "result" in restraints of trade (e.g. S. 2718, § 2(a)(2), which arguably shifts the focus away from intent to factual results.

27/ 15 U.S.C. § 62.

28/ S. 2718, § 2(a)(3).

29/ See United States v. Minnesota Mining and Mfg. Co., 94 F.Supp. 947 at 965 (D.Mass. 1950).

30/ Senate Report at p. 15.

APPENDIX 3

LETTER DATED MAY 27, 1980, TO HON. JONATHAN B. BINGHAM FROM RALPH H. CHEW, PRESIDENT, CHEW INTERNATIONAL CORP.

MAY 27, 1980.

Representative JONATHAN BINGHAM,
House of Representatives,
Washington, D.C.

DEAR MR. BINGHAM: I testified, as President of NEXCO, on the Export Trade Bill, and I appreciated very much that a member of the American Export Trading Company industry was finally able to get a small voice into the legislative process concerning Export Trading Companies.

The question is the seriousness of our adverse balance of trade. However, American exports are over $200 billion, and we have an excellent export industry which would be terribly disrupted by the entry of banks as owners under the Stevenson Bill.

If your objective is to have an immediate effect on our balance of payment, the Stevenson Bill would be counter-productive. It is a very radical effort to deal with the not fully understood problem of the nature of Export Trading Companies in the United States.

Instead of risking the destruction of the Export Trading Company industry, a productive and sensible procedure would be to build up existing trading companies and put new and greater resources into them, which might include banks, but not in the rushed way contemplated by this legislation, not with total disregard for the existing industry.

Yours truly,

RALPH H. CHEW,
President,
Chew International Corp.

APPENDIX 4

STATEMENT OF ROBERT C. BUCKINGHAM, PRESIDENT, SEAPORT SHIPPING CO.

My name is Robert C. Buckingham, President of Seaport Shipping Company in Seattle, Washington. My firm performs the services of an Independant International Freight Forwarder, Customs House Broker and I.A.T.A. Air Cargo Agent. We have been in business in Seattle since 1939 and have branch and correspondent offices throughout the United States and Canada.

It is encouraging to note that Congressman Bonker is concerned enough about our deficient trade balance to take the initiative to propose what he considers to be corrective legislation. It is discouraging, however, to read his proposed legislation, HR 7230, and find no substantive proposal that will truly stimulate exports from this country.

I have devoted my entire adult career, except for interludes of military service, to facilitating international commerce. In my opinion the proposed legislation of HR 7230 does not address the actual needs of our economy as a remedy for our balance of trade deficits.

To be specific, there is no need to create what the proposed bill refers to as an "Export Trading Company." We have all of the ingredients of what he defines as an export trading company operating within our economy today. These ingredients are not combined into a single licensed entity for some very sound reasons. The creation of licensed entities that can perform all of the services that he proposes, especially if they are government agencies as stated in Section E, creates adverse conflict of interest situations on several fronts of business. Our government and the trading industry have recognized this for several years and avoided these conflicts by specific legislative action. Mr. Bonker's proposal would decimate existing statutes that protect the public's right to conduct their business affairs with the confidence that parties not directly involved in private transactions will not be privy to confidential business information.

The international business market is not the dangerous and awesome arena that Mr. Bonker describes. As a matter of fact, an international transaction that is facilitated through normal international banking channels is extremely safe and simple to accomodate. On behalf of our exporter customers, our firm alone handles thousands of such transactions each year.

I would like to suggest that in place of his proposed legislation, which appears to be written as a supplement to the Stevenson Bill, S 1663 (and other bills), that Mr. Bonker draft original legislation that truly stimulates American businesses to participate in international trade. The American economy offers such a vast marketplace that there is no real incentive for many American manufacturers and agriculturists to seriously consider foreign markets.

One of the apparent hurdles to entering the international market for American businesses appears to be the expense of getting into the foreign marketplace. Certain tax benefits could be developed to lower this hurdle. For instance a credit of a 1.5 taxable income deduction factor for every dollar spent in developing overseas business could be instituted. Another deduction could be developed by a pro-rated percentage credited for every dollar of value of U.S. goods exported. We already have instruments of statistical recording, i.e., Shipper's Export Declarations, to document such transactions. These are just two simple suggestions and I am sure that more can be developed, but what must be emphasized is that we can operate effectively within out existing framework of business without legislating an entirely new international business structure.

I wish to thank you for allowing my testimony to be placed on record and hope to be allowed to contribute again as this legislation develops. In this vein, I will also offer my services to this committee and/or the authors of the proposed bill for any contributions that they feel would be appropriate.

APPENDIX 5

STATEMENT OF NATIONAL MACHINE TOOL BUILDERS' ASSOCIATION

I. INTRODUCTION

The National Machine Tool Builders' Association is a national trade association representing over 370 American machine tool manufacturing companies, which account for approximately 90% of United States machine tool production.

Although the total machine tool industry employs approximately 110,000 people with a combined annual output of around $3.9 billion, most NMTBA member companies are small businesses with payrolls of 250 or fewer employees.

While relatively small by some corporate standards, American machine tool builders comprise a very basic segment of the U. S. industrial capacity, with a tremendous impact on America. It is the industry that builds the machines that are the foundation of America's industrial strength. Without machine tools, there could be no manufacturing; there would be no trains, no planes, no ships, no cars; there would be no power plants, no electric lights, no refrigerators and no agricultural machinery.

It is significant to note that while the domestic U. S. machine tool market has been oscillating with very little real growth since the middle 1960's, the world market has grown substantially. Unfortunately, most of this worldwide expansion has been absorbed by our foreign competitors, eroding our market share.

In the middle 1960's, the American machine tool industry supplied approximately one-third of the total global market. In other words, one out of every three machine tools consumed in the world was produced by an American machine tool builder. However, according to American Machinist, as of the end of 1979, that portion has fallen to only 17.1%. In short, over the past 13 years, our share of the world market has plummeted by almost 50%.

This dramatic decline is the result of two factors. First, our domestic market has been invaded by foreign competitors on a scale never before dreamed of. For example, since 1964, America's imports of foreign machine tools have more than tripled, growing from 7% of total consumption 15 years ago to 24% in 1979. It is obvious that because the United States is the largest open machine tool market in the world, our foreign competitors have pulled out the stops and are aiming their export marketing efforts at America.

Second, and this is the aspect that we wish to focus on at this time, our share of the export market has also declined. When we look at the dollar value of our exports, the results of our efforts look encouraging. But if we look at American exports as a percentage of all of the machine tool exports in the world, the results are, indeed, discouraging. We have been losing export market share at an alarming rate. Our share of the world's machine tool exports fell from 21% in 1964 to just 7% last year, placing us well behind West Germany and Japan as a machine tool exporting nation.

Finally, and perhaps most alarmingly, in 1978 the United States suffered its first machine tool trade deficit in history, with imports exceeding exports by some $155 million. And, to make matters even worse, this deficit trend continued through 1979. Even though our exports grew by 15.8% over 1978 levels, imports soared by more than 45% to produce an even larger trade deficit of almost $400 million.

From these statistics it is obvious that export sales must play an increasingly significant role in the marketing strategy of American machine tool builders specifically, and all U. S. businesses generally. Also, it is important to point out that although there are some members of our industry who are quite adept at exporting, even under the current less than optimal conditions, their efforts could be even more productive were they to benefit from the integrated approach of an export trading company as contemplated by the various bills upon which we will comment today. Moreover, such experienced exporting companies have the potential to assist other smaller and/or new to export businesses by functioning as a part of a full service export trading company.

II. NATIONAL MACHINE TOOL BUILDERS' ASSOCIATION EXPORT PROMOTION ACTIVITIES

NMTBA and its member companies have devoted considerable time and effort to increasing exports.

NMTBA, on behalf of the American machine tool industry is devoting its own resources to the development and maintenance of international markets everywhere in the world. The Association has three people who spend virtually their full time overseas promoting United States machine tool exports with considerable assistance from the Department of Commerce.

NMTBA develops seminars and workshops to train our members' people on international financing, export licensing, or any other subject that will benefit a machine tool builder. We conduct market research to locate new and promising markets for industry development. We have conducted twenty-four Industry Organized, Government Approved (IOGA) trade missions to help gain a foothold in these new markets, and more are planned for 1980 and 1981. We sponsor foreign exhibitions so that our members will have more opportunities to display their products overseas. In addition, we often work in close conjunction with the Commerce Department on such activities as recruiting exhibitors for export promotion events such as catalog shows, video tape shows and technical seminars. We organize reverse trade missions to bring foreign buyers to our plants. And we bring large groups of foreign visitors to the International Machine Tool Show in Chicago every two years. The Commerce Department has worked closely with us in the development and implementation of these programs, as have the commercial officers in our embassies and trade centers around the world.

III. ANTITRUST LAW MODIFICATION PROPOSALS

The Webb-Pomerene Act, enacted in 1918, allows American companies to join together in developing foreign sales while enjoying, to some extent, immunity from the antitrust laws. The current statute is administered by the Federal Trade Commission (FTC).

Unfortunately, the role of Webb associations has declined drastically over the years. From a high-water mark of about 19% of total U. S. exports between 1930 and 1935, Webb associations have slipped to less than a 2% share today.

Within the past year the merits of the Webb-Pomerene Act have been re-examined by the National Commission for the Review of Antitrust Laws and Procedures. After reception of conflicting testimony it was the Commission's recommendation that Congress re-examine the Act, and modify it where necessary.

In that regard, we note that during the 96th Congress a number of bills have been introduced which would modify and in some cases go significantly beyond the provisions of the current law. Specifically, we commend you, Mr. Chairman, for your leadership in this vital area of foreign economic policy. Your bill, H.R. 5061, the "Export Promotion and Trade Association Act of 1979," is an important first step in reassessing the United States leadership in foreign trade.

We also wish to take this opportunity to commend Congressman Bonker for his interest in fostering increased U. S. exporting, which is evidenced by his sponsorship of

H.R. 7230, the "Export Promotion and Export Trading Company Act of 1980." If enacted, legislative initiatives such as these will be of immense assistance to U. S. enterprises already involved in foreign trade, and we believe will serve as important encouragement to businesses which are reluctant to enter the export market under the present conditions. However, we would add the caveat that without certain banking provisions and Webb-Pomerene modifications, similar to those contained in the Senate's legislation and several of the other bills before this Subcommittee, any effort in this area, although meritorious in itself, will be less than fully effective in achieving the desired goal of increased U. S. competitiveness in foreign trade.

As you know, the Senate Banking Committee has recently reported its legislation in this area, S. 2718. That bill addresses many of the issues to be discussed here today. We commend the Senate Banking Committee for its judicious and expeditious consideration of this important legislation. The Senate Banking Committee's action is also significant in that it gives increased impetus to the legislative processes necessarily a part of the development and implementation of the export trading company concept. Therefore, we would strongly urge this Subcommittee, in consultation with other appropriate committees of the House of Representatives, to take the lead in drafting corresponding House legislation, so as not to lose the current legislative momentum for this important concept. Such increased U. S. competitiveness in foreign markets should not, indeed must not, be unduly delayed if we are to get back on the road towards regaining our once strong foreign trade balance.

We strongly support the expanded export trading company concept embodied in H.R. 5061. We believe that your bill's expansion of the scope of export trading companies' current activities under Webb-Pomerene to include both goods and services is a major and significant improvement. We commend you and the sponsors of the several other bills before this Subcommittee which adopt this approach.

In the language of your bill, these expanded export activities are in part accomplished by exempting from the antitrust laws "any association which is formed for the sole purpose of engaging in export trade, which is engaged in export trade, and which is certified in accordance with the procedures set forth in this Act." However, you have also prudently limited such exemptions in cases where such associations would result in a substantial restraint of trade or competition within the United States, or where an association or its members, with respect to their export trade enter into an agreement to fix prices or divide sales territories, exports goods which may reasonably be expected to be consumed or resold within the United States, or acquire control of a patent or license which will directly result in the obtaining of a substantial share of the export market.

Closely allied with the issue of certain antitrust law exemptions for export trading companies formed under the auspices of the legislation is the question of who would be able to bring an antitrust complaint against such an export trading company. Under the terms of H.R. 5061, "only a department or agency of the

United States acting in its official capacity" would have standing to bring an antitrust action. However, private persons are provided the right to petition the Secretary of Commerce if they believe that an association fails to meet the requirements of this legislation. If after an adjudicatory proceeding (in accordance with the provisions of section 554 of U.S.C. Title 5) the Secretary determines that the allegations in the petition are true, the Secretary shall bring an action against the violating export trading company.

Additionally, section 9 of your bill, Mr. Chairman, authorizes the Secretary of Commerce, with the concurrence of the Attorney General and the Chairman of the Federal Trade Commission, and after a period of public comment, to formulate and publish proposed guidelines to be applied in determining whether an association, its members, and its export trade meet the statutory requirements that would be established by this Bill.

All three of these provisions: the exemption of export trading companies from the antitrust laws, the designation of the responsibility for interpreting those exemptions, and the right to bring an action to enforce these laws, are major steps toward resolving the uncertainty created by varying interpretations of the antitrust laws under the current Webb-Pomerene Act.

Finally, we commend and strongly support the requirement of confidentiality as to the applications and annual reports required under H.R. 5061.

Until American exporters are able to combine all aspects of American technology and business know-how into a single overseas consortium, American competitiveness in overseas markets will continue to be seriously impaired.

IV. BANKING ISSUES

In a related and what we consider to be integral aspect of making it possible for American companies to combine their resources in a variety of ways and configurations in the interests of more competitive overseas marketing of American products and services, we believe that it is incumbent upon this Subcommittee to seriously consider incorporating provisions which would enable banks and other financial institutions to function as active participants in export trading companies. Specifically, Congressman LaFalce's bill, H.R. 7310, the "Export Trading Company Act of 1980," and H.R. 7364, the "Export Trading Company Act of 1980," introduced by Congressman AuCoin adopt this approach.

We believe that the combination of your bill's expanded concept of export trading companies with the banking provisions included within H.R. 7310 and H.R. 7364 will permit the harnessing of all of America's potential resources in the pursuit of U. S. exports.

While we recognize that such provisions are not technically within the exclusive legislative jurisdiction of this Subcommittee, we nevertheless believe that this Subcommittee, with its acknowledged expertise in international economic policy, is an appropriate architect of export trading company legislation, and as such should incorporate all of the provisions requisite for the establishment of successful export trading companies under this legislation. Your establishment of the broad contours and perspective of this legislation will in no way impede other Congressional committees from exercising their appropriate jurisdictional prerogative in shaping the final work product.

V. GOVERNMENT PARTICIPATION

In a similar vien, both H.R. 7310 and H.R. 7364 go even further by committing the full faith and credit of the United States government to the pursuit of more aggressive and expanded export trade. Incorporation of these provisions along with the concepts in your bill will permit American exporters to compete more fairly with government-leveraged competitors from other countries.

Specifically, these bills would establish the eligibility of export trading companies to receive Eximbank loans and guarantees to meet up to 50% of export-related operating expenses up to a maximum of $1 million in one year or $2.5 million in total.

Additionally, export trading companies, if credit worthy, would be eligible to utilize all loan, guarantee and insurance programs of the Export-Import Bank.

Finally, Eximbank could guarantee up to 80% of short-term "bridge loans" for both export trading companies and other exporters, thus helping smaller businesses to overcome a significant financial barrier to selling overseas. Alternatively, you could adopt the approach taken by the Senate Banking Committee in S. 2718, authorizing the Commerce Department and the Small Business Administration to provide start up and operating costs of export trading companies and restricting Eximbank participation to guarantees of bridge loans.

These important export policy reforms should be adopted, if the United States is to reverse its overburdening trade deficit.

VI. TAX TREATMENT OF EXPORT TRADING COMPANIES

Both H.R. 7310 and H.R. 7364 would permit export trading companies to enjoy Domestic International Sales Corporation (DISC) treatment of all their income, including income derived from the providing of export services. DISC treatment does not now apply to income derived from export services.

This is a very helpful change in the tax laws. We would suggest that consideration should also be given to both raising significantly the threshold for application of the incremental aspect of DISC and to reducing the average percentage of export sales used to compute the basis over which DISC treatment is applied. These additional improvements will enable small and medium sized exporters to improve their competitiveness in overseas markets. They also take appropriate cognizance of the role of inflation during the past few years in driving up the dollar value of many U. S. export sales.

Finally, both of these bills propose an exemption for export trading companies from some of the Subchapter S requirements of sections 1371 and 1372 of the Internal Revenue Code of 1954. We would recommend such changes as being appropriate and would urge their incorporation in this draft legislation. Although the administration, in contemplation of a more general modification of Subchapter S requirements, has recommended that this legislation not change these regulations, we believe that a change specifically directed to the needs of the export trading companies authorized by this legislation would not be inappropriate at this time.

VII. CONCLUSION

In conclusion, we commend you, Mr. Chairman, as well as the sponsors of the other bills currently before your Subcommittee, for your legislative initiative in the area of export trading companies. As in the case of last year's efforts on the Export Administration Act, you and your Subcommittee continue to demonstrate that you understand, and are willing to enhance through concrete proposals, the vital role that exports play in the overall strategic and economic well-being of the United States.

The expansion of currently permissible activities under Webb-Pomerene to include services in addition to goods is of vital importance if the U. S. is to remain an aggressive and effective competitor in the ever expanding global economy. Additionally, clarification of the antitrust laws in this area, specifically those concerning which government agencies will be empowered to enforce such laws, will remove the legal uncertainties which heretofore have posed significant, and for many insurmountable, barriers to active involvement in the export market.

As we have stated, by restructuring the contours of export trading company activities, this legislation will provide the vehicle for increased export activity, but the active and integral involvement of banks and other financial institutions in export trading companies is the absolutely essential element needed to power this vehicle. We believe that the combination of these two elements are the necessary and sufficient requirements of an effective export trading company bill.

Additionally, the extention of Eximbank loans to such trading companies as well as the option of electing DISC status by trading companies, although not as absolutely critical as the banking provisions previously mentioned, nevertheless, are important concepts which merit attention in comprehensive export trading company legislation.

Finally, we thank this Subcommittee for affording us the opportunity to relate the experiences of the U. S. machine tool industry in the export market. We believe that the proposals contained in the bills we have addressed today, in conjunction with the improved export administration controls, and executive branch international trade reorganization plan will do much to encourage and promote overseas trade by both experienced and new exporters. We thank the Subcommittee for its attention and would be happy to respond to questions.

APPENDIX 6

The Realities of United States Foreign Trade and The Fictions Of Our Cartel Advocates

by Emil Sherer Finley

Emil Sherer Finley is the founder, president and chief executive officer of International Commodities Export Company (ICEC), a division of ACLI International.

Painful facts make fools of some of us all of the time, and almost all of us some of the time. When all the known evidence says "green," some of us proclaim "red" in the hope of finding some evidence of red. When we need fairness, some of us would impose judges who have pre-judged our cases. When we have proof that people have hurt us, some of us would reward them lest they not reform. When we have to know the facts, most all of us resort at some stage to fictions to shelter us from the unpleasant reality. When in doubt, we quite frequently legislate.

Not that truth, beauty and right action don't often emerge and win out. It is the glory of free speech and a democratic process that quite often pigheaded wrongness gets defeated in the marketplace of ideas and therefore in the halls of Congress. It involves a struggle that is rarely inviting. But we have to be existentialists, if not optimists; for to be otherwise is to leave the field by default to the beguiled, the misled and, alas, the greedy. Conscience requires a fight.

In trying to deal with some woes of our foreign trade, we have been besieged and somewhat beguiled by the misled and, yes, the greedy. The cartel advocates are in the marketplace to overcome painful facts with fictions. Realities, which once seen would help us to deal rationally with the painful facts, are lost. And some very good men have made some very wrong proposals.

PAINFUL FACTS AND FOOLISH REACTIONS

The most painful facts of our foreign trade are that in six out of the last eight years the United States has had a deficit balance of foreign payments; and inflation has boomed along, with the cheapened dollar only exacerbating the flow of money out by reducing our buying power. Last year we had a deficit in our balance of trade of $30 billion.

We are not used to such things. All was right with our trade in this century up to 1971. Because we get worried it becomes time to panic or to avoid real panic by frenzied action. It becomes time to look for quick solutions. And it becomes time to treat painful facts as if they have nothing to do with our own faults, for self-blame is still more painful. We begin to create myths from long-ago half-truths or from no-truths. Thus, it must be that the foreigners at our gates are conspiring against us and are taking advantage of our good nature and fairness. They bribe better or bigger; they are more organized in combating our poor, fractionalized industries. Indeed, we see grand cartels, government sponsored, taking away our business; and all the while our Justice Department's Antitrust Division and our notions of free competition do not allow us to fight back. Foreigners come here with impunity, and we go nowhere but that we are faced with stifling, organized resistance in Washington and unfair, subsidized competition from the outsiders. The answer—so we are then told—is to fight back with the same weapons. Let us create our own cartels. There are even suggestions that we were wrong in this post-Watergate era to demand that our industries stop bribing foreign officials. Nonsense: all of this.

One need not take seriously the all-too-serious "jokes" about the need to out-bribe our foreign competitors. In the long run, self-defeating corruption cannot be justified. If our society must save itself by being corrupt, then it is not worth saving. I won't dote, but the fact is that Americans can compete successfully without bribing. If there is a cartel that is needed, it is a cartel that has one rule: thou shalt not bribe.

As to the drive to create more cartels, that requires some analysis, for it is not plainly immoral and becomes amoral only when reality catches up with the fictions that are used to support the cry of more cartels.

Here is the reality.

THE WEBB-POMERENE ACT

There is already in existence in the United States a piece of cartel-creating legislation dating from 1918, the Webb-Pomerene Act. The Webb Act allows for the creation of associations of producers of goods solely for the purpose of engaging in export trade. The associations can operate if they register with the Federal Trade Commission and as long as they do not restrain the export trade of any "domestic competitor." Webb associations are not supposed to "enter into any agreement, understanding or conspiracy, or do any act which artificially or intentionally enhances or

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depresses prices within the United States . . . or which substantially lessens competition within the United States or otherwise restrains trade therein." Under a consistent interpretation by the FTC and as followed by the courts, Webb associations can and do fix prices and set up quotas.

> **"Under a consistent interpretation by the FTC, and as followed by the courts, Webb associations can and do fix prices and set up quotas."**

While the original vision of the Congress and of the Federal Trade Commission Report that recommended the Webb Act saw the true function of the association as a cost-reducing expediter, there is no question that the role of price-fixer and market allocater has been the predominant feature of Webb associations over the years. In brief, Webb associations have taken on the usual roles of cartels. Thus, we have in America government sanctioned cartels that are exempted in the *export* trade from the normal operation of the antitrust laws.

The prime justification back in 1918 for Webb associations was that they were needed by small companies in order to compete with foreign subsidized businesses and cartels. At the time, American corporations were only beginning to become factors in world commerce. The theory was that associations could cut costs and thus would allow American corporations to compete successfully on the basis of price as well as quality of goods.

WEBB ACT PERFORMANCE

In 1967, the Federal Trade Commission completed a study—an empirical study—of Webb associations over their first 50 years. The report found that the Webb Act had failed to promote United States exports in any significant way during those 50 years. The 1967 FTC study revealed that the export associations that succeeded for any length of time were those involved in industries where the members were leaders of a domestic oligopoly, were dominant factors in the foreign trade and dealt with a homogeneous product. The small company did not take advantage of the Webb-Pomerene Act. Of the 465 members of Webb associations during the period between 1958 and 1962, for example, only 17 per cent had assets of $1,000,000 or less, and only 22 per cent had assets of between $1,000,000 and $5,000,000. The large firms counted for about 80 per cent of all exports by Webb associations. There were never any more than 57 registered associations in any one year, and some companies were members of more than one association. During that same period of 1958 to 1962, Webb associations accounted for only 2.4 per cent of total United States dollar exports. The 1967 FTC Report concluded:

> "In summary, Webb-Pomerene activity is limited to comparatively few associations handling a limited range of products, and the number of beneficiaries from such activity is also quite small. . . . These members [of Webb-Pomerene associations], for the most part, were drawn from the upper reaches of the business population and, at the same time, were the major beneficiaries of Webb-Pomerene assistance. . . . Fifty years of experience, including a recent period of uninterrupted trade expansion, reveals the Webb-Pomerene Act as no panacea for the expansion of foreign trade by small business and, indeed, points to the conclusion that it plays a very minor role in over-all U.S. exports." (FTC Report, pp. 317-18)

The data available since 1967 proves that nothing has changed. If anything, the utter failure of our legalized cartels in promoting American exports is more pronounced. By 1976, only 1.5 per cent of the total U.S. exports came through Webb associations and the number of registered Webb associations was only 33. Today, there are 35 registered associations with 338 members, many of which are in more than one association. The registration rolls at the FTC make it plain that the firms that benefit most from the Webb Act are still those that market homogeneous products and dominate their industries. I have taken a look at the nature of the products of the 35 currently registered Webb Act associations. Only four of them seem to be in industries where there are non-homogeneous products.

As of 1976, a total of six Webb associations accounted for nearly two-thirds of the dollar value of all Webb-assisted exports. These six associations (plus one other) are the only presently registered associations that were in existence in 1962. Four of the big six produce homogeneous goods: dried fruits (2), rice products and paper. The other two are both film-industry associations, formed by the 10 dominant firms in the industry.

> **". . . there is no question that the role of price-fixer and market allocater has been the predominant feature of Webb associations over the years. In brief, Webb associations have taken on the usual roles of cartels."**

The pattern is clear. Webb associations have benefited those firms that need help the least, and the firms use the associations not to promote volume but to stabilize export prices. Since the future (and past strength) of United States exports lies in complex, differentiated products, Webb associations are not likely to play any larger role in the United States export picture than they have in the past.

THE EFFECT ON DOMESTIC TRADE

Although irrelevant to small United States companies and insignificant in the scheme of over-all exports, Webb associations have had a deleterious effect on domestic-pricing and competition.

With most homogeneous products there is a traditional relationship between the domestic price and export price (usually a percentage "discount" on the domestic price). Usually, the export market is viewed as a way to sell off "surplus" and ward off domestic price deterioration. As a result, export price fixing is always bound to mean price fixing or stabilization in the domestic market. We cannot be blind to what common sense screams at us: When major producers of the same or virtually the same product set export prices in unison and "predict" what they will be for the future, they know necessarily that they are helping to set a level for domestic prices and are helping to stabilize these prices.

> "When major producers of the same or virtually the same product set export prices in unison and predict what they will be for the future, they know necessarily that they are helping to set a level for domestic prices and are helping to stabilize these prices."

There is also a domestic monopolizing aspect to Webb associations. Successful Webb Act associations dealing in undifferentiated products control or dominate the "surplus" export market; and that surplus market often is the difference between a profitable trading year or an unprofitable one. Even when large producers remain outside the cartel, the road to survival or entry of the small firm is more difficult.

That Webb-Pomerene cartels are needed to fight foreign cartels has always been grounded in a theoretical fallacy and no real truth. The existence of foreign cartels that fix prices theoretically could only *help* American competition. They could only create price umbrellas for their American competition. In the United States, for example, when these Webb-Pomerene Act associations come into being, the large American companies outside the cartels are quite happy because they can easily underprice the rigid cartel or the cartel sets a price that the competitors gladly follow. Indeed, it is a commonplace in the true market that the best policemen of Webb-Pomerene pricing are those outside the cartel.

In fact, as the FTC found in 1967, large-oligopolistic American corporations do not need the associations to compete with any foreign business concern or groups of concerns. Today American companies dominate the fields where Webb associations operate successfully. By stabilizing prices and establishing quotas, the members of Webb associations do not compete in any traditional sense with the foreigners. If they wanted to compete for business, they would not be fixing prices, they would be setting prices independently based on costs and reasonable profit. And dealing mostly in homogeneous products and in dominated markets, Webb association members do not compete unless they compete on prices or services that amount to price savings.

THE REACTION ABROAD

It is a fact that Webb associations are welcomed by their supposed enemies abroad. When Webb associations are created or expand, the foreign competitors hail the event. The "reviews" abroad become "mixed" only because the *purchasers* of the products—usually found in undeveloped nations—know that they can expect increases in the United States prices and stabilized prices everywhere. All one has to do—if one really wants to find out what the reality is—is to read the trade journals when one of these Webb Act associations is created or increases its membership.

For example, *Green Markets*, a fertilizer market trade weekly published by McGraw-Hill, reported that Brazilian traders and users were quite unhappy when the Phosphate Chemical [Webb-Pomerene] Association—"Phoschem"—expanded its membership of fertilizer producers last year. The July 17, 1978, edition quoted one Brazilian "source" as saying it was "rotten." Another Brazilian was reported to have said, "We expect drastic increases in U.S. prices." Another said that it was likely to "jeopardize" the "import volume." Brazil is a major importing market for American fertilizers. But the article further reported: "One Canadian *producer* thinks higher U.S. export prices might even stabilize the Canadian market and help his company." It said also: "An official of the South African Fertilizer Society [a cartel] said stable prices and a better market would probably result." The article noted: "Most European producers are optimistic. They feel that as well as raising prices, the Phoschem expansion will provide the market stability which has been absent in recent months."

That's reality. What Webb Act cartels are about are price stabilization, price-increases, production control, hoped-for worldwide "regulation," not competition and vigorous promotion of American products. The result is less trade for us—controls, controls, controls for the sake of prices. It is no accident that since Phoschem's expansion, the prices of its products—export and domestic—have gone up about 50 per cent and that hike does not reflect cost increases. Inflation guidelines are ignored. And so the theories of those not in the marketplace are exposed as fantasies. Read what businessmen say; listen to us in the trade, who know our "customers."

"By stabilizing prices and establishing quotas, the members of Webb associations do not compete in any traditional sense with the foreigners. If they wanted to compete for business, they would not be fixing prices; they would be setting prices independently based on costs and reasonable profit."

SEVERAL OTHER REALITIES

Furthermore, the function of selling agent is not best done by a Webb-Pomerene Act association or, in fact, often done by the associations. Again, a little investigation will show that Webb association members do their own selling and their own marketing and use the association offices only as a conduit and a means to prevent competition. According to the FTC, only eight associations reported sales agencies in the United States and only six reported overseas agencies in 1976. Moreover, only 12 directly assisted exports, and these exports accounted for less than 17 per cent of dollar Webb-assisted exports in 1976. As the FTC has found: All the sales functions can be, and have been done historically, with more vigor and with a lot more results by independent exporters. Agreed market division means complacency and no real promotion. Webb associations beget an atmosphere of "cordiality" with foreign competitors that is indistinguishable from gentlemen's agreements.

Moreover, it is a fact that in many industries where Webb associations exist, there is no real foreign competition. Even if you believe the answers that the associations have supplied to the annual FTC questionnaires, Webb Act associations have hardly been fighting foreign cartels. Only 11 out of the presently registered associations have claimed competition from cartels or government-sponsored organizations. And their answers have to be suspect; there is, at least, hyperbole in them.

Again Phoschem provides a good example. Its answers to the FTC claim competition from overseas cartels and foreign government organizations. In the two major products that it deals with, diammonium phosphate and triple superphosphate ("DAP" and "TSP"), Phoschem has no significant competition in most world markets. And, by some "magic," Phoschem will not offer much material to those few places where the foreign production has had its "traditional" sway. Over-all, the Americans dominate what they choose to dominate. They are the giants. In 1977, for example, the world export trade in DAP and a related product totaled 1,870,000 tons (of P^2O^5). The American share of that market was 1,367,500 tons (of P^2O^5). In 1977, the total world export of TSP totaled 986,500 tons (of P^2O^5). American exports accounted for 904,600 tons (of P^2O^5).

Thus, there is no need for Webb-Pomerene Act associations in fields such as the one with which Phoschem is involved; they serve nothing but anticompetitive ends. And Phoschem, I submit, is typical.

Our problems stemming from the Webb Act cronyism and artificial price structuring are exacerbated by still another development unforeseen in 1918: Multinational corporations are found in good number among Webb associations. And they aren't merely multinationals in unrelated businesses; many Webb association members have foreign subsidiaries that (1) buy from the Webb associations and (2), believe it or not, compete with the Webb associations—without the slightest compunction and without protest within the associations. There hasn't been a word of criticism from the Federal Trade Commission. Necessarily, where multinationals participate in American price-fixing and quota-setting, something beside the promotion of American exports has to be involved. In fact and in effect, our foreign competitors participate in our price-fixing decisions and their interest is not in "selling American."

Factually, foreign buying "cartels" have come about in response to price-fixing selling cartels—our Webb associations. There is no evidence that foreign buying cartels or foreign government purchasers have hurt United States exports or forced anybody to sell anything other than at a fair and profitable price. There is no evidence that they have had an unfair bargaining position vis-a-vis American exporters. We in the market know that the reality is that government agencies are most often easier to deal with than multiple foreign purchasers. It is not a fact that we sell cheaper to government sponsored buyers. For example, Asian government agencies and buying cartels traditionally pay higher prices than do the multiple private purchasers in Brazil.

When you are concerned with standardized products in demand—the products that are the prime items for Webb-Pomerene associations—there are, in fact, no barriers with which the Webb-Pomerene Act has to deal. With these products, there are producing nations and there are consuming nations. Consuming nations are always disturbed by cartelization, because they know that that means higher prices (and in the instance of fertilizers and Phoschem, for example, higher food prices for their populations). The hurtful barriers come, if at all, from *producing* nations to protect home industry. Webb-Pomerene Act associations and the Webb Act itself have nothing to do with fighting those barriers. Webb-Pomerene associations encourage those barriers because they naturally tend to respect them. Price-minded cartels are interested in keeping out foreign competition from the United States (because they are the major producers here). There is an understood rule of reciprocity at work, which stabilizes prices and protects home markets.

All of the facts should tell us, then, that we should have more competition, not less competition, if we want to increase our trade. Give us more aggressive marketing, not less. The facts establish, at very least, that Webb association export outlets are hardly worth the harmful effects on the domestic market. Those facts should also advise us: Be careful of these price-fixing and quota-setting organizations with their meetings, constant information-sharing and daily price-"predicting."

THE RESPONSES
AND THE DANFORTH BILL

But our balance of payments is bad; and that means fewer jobs at home, a weaker dollar, a greater impetus to inflation and a thousand other ramifications that economists say we fall heir to. So the cartel believers come out of the woodwork and are listened to. Groups of them, particularly the National Construction Association, importune the Commerce Department. (They know enough to stay away from watchful Justice and sleeping FTC.) They go to the Congress. And, despite the empirical evidence that lies for the reading in FTC reports and records and despite a recent critical report of the President's special commission on the antitrust laws, we have the Commerce Department lobbying for more cartels and the lessening of restrictions on them. And we find some very able Senators believing in the benefits of more cartels and the lessening of restrictions on them. Logic and the facts are ignored; myths and plain fiction take over.

Indeed, Senator Danforth in conjunction with Senators Bentsen, Chafee, Javits and Mathias (a most formidable group) introduced a bill in the Senate last February that would amend the Webb-Pomerene Act by expanding its antitrust exemptions to allow for more restraints on domestic commerce, enlarging its coverage to activities beyond foreign export trade (as long as they were incidental to it) and placing services as well as goods under amended Webb Act protection. The bill would transfer supervision of the associations from the moribund Federal Trade Commission to the friendly Commerce Department and insulate the associations from direct Antitrust Division oversight. While there would be pre-registration screening for new Webb associations, all present associations would be grandfathered into the antitrust exemption, and no private person could sue to revoke or alter any association's status. A review of the new procedures under the Act would occur seven years from now.

The bill itself and Senator Danforth's Senate speech in support of it make it plain that it is the product of fear and fiction. The "findings" that appear in the bill as a preamble give the painful and scary fact of a $30 billion trade deficit in 1978, tell ominously of foreign government subsidized competition to United States exporters, note the fall of the United States' share of total world exports from 19 per cent in 1956 to 13 per cent in 1977 and then declare:

> "Small and medium-sized firms are prime beneficiaries of joint exporting, through pooling of technical expertise, help in achieving economies of scale, and assistance in competing effectively in foreign markets. . ."

That foreign government subsidized competition is not so terrifying and that small and medium-sized firms have never benefited from such joint exporting are now beside the point. Red has become green by proclamation and because of painful facts. The pre-judgers—the Department of Commerce—are the new guardians. The oligopolists and multi-nationals are to be rewarded by automatic inclusion in the new and more tolerant system. When one should hesitate, we legislate.

In his speech to the Senate introducing his bill, Senator Danforth acknowledges the poor performance of Webb associations as promoters of commerce and the fall-off in membership. But he gives some reasons. The first reason for Webb failure, he says, is that the "vast majority of the . . . Webb-Pomerene associations lacked sufficient product-market domination to exert foreign market price control and membership discipline." That, of course, is not changing facts; that is misreading their import. What Senator Danforth is telling us is that only the giants (1) have been able to use the Act and (2) have connived successfully to fix prices because they are dominant and can make their price-fixing stick. That hardly speaks for the need for more associations or the desirability of more leeway for *all* of them!

"Senator Danforth's bill . . . is the most serious, recent and erroneous reaction to unfavorable foreign trade events. . . . The bill at best sets our sights away from where they should be. It is frightening that very sound men can be so misled."

Senator Danforth then tells us that the second reason for poor Webb-Pomerene performance is our "traditional" primary focus on the domestic market. Surely the primary focus of most of our indigenous industries will always be on our domestic market, the biggest market in the world; but the past two decades have witnessed an explosion of interest in foreign markets and a vast expansion in foreign trade. And look how Americans have jumped—tripped over themselves—at the opening of opportunities in China. Sufficient focus there is; and foreign trade will expand. The facts bespeak a reason for failure other than a lack of focus on foreign trade: interest in associating has not similarly expanded because the Webb Act can only benefit the dominant few in very special industries.

For his third reason for Webb-Pomerene failure, Senator Danforth offers the fact that services are not covered by the Webb Act. He then says that the President's National Commission for the Review of Antitrust Laws and Procedures recently recommended that services be covered. That is a gloss. The independent Commission appointed by the President made its report last January. There was a section on the Webb-Pomerene Act. The report reviewed the poor performance of Webb-Pomerene associations. It rejected the proposition that the Webb-Pomerene Act be expended or even be kept in place. In fact, a number of Commissioners would have repealed it with no further ado. The report declared that automatic exemptions are not warranted, and a needs test should be required of all would-be registrants. The report urged that the Congress review the Webb-Pomerene Act with a view to repealing it or substantially restricting it. Its recommendation on services was that *if* the Act were retained then it saw no reason not to include services as well as goods.

Whatever, this catering to services is narrow special-interest legislation, a sop to the construction industry pressure groups. I predict that, if the special legislation ever comes to be, it will not spark any more activity abroad; it will only benefit the large corporations already in the market by a gift of immunized collusive price-setting—which will have the usual "predictive" price-setting influence in the domestic market.

For his fourth and "perhaps most important" reason why Webb-Pomerene has failed, Senator Danforth offers the hostile attitudes of the FTC and the Antitrust Division of the Justice Department and the fears that businessmen have that they will be declared antitrust violators if they join the associations. The fear of the FTC has to be a fiction; it has been a docile watchdog; more then docile, it has wagged its tail. It has gathered information from the associations without questioning the accuracy of anything and has done nothing with that information. It let one association rig bids for United States government AID-financed contracts for years; it was the Justice Department and eventually the Supreme Court that put a stop to that multi-million dollar raid on our Treasury.

As to the Justice Department, it has never made a wholesale attack on Webb associations, generally leaving them to the FTC. The Antitrust Division, however, can and does bring a welcome skepticism and questioning to bear on these cartels. Industry and the Congress should be grateful that someone is there ready to worry about whether permitted collusion has slipped into illegal conspiracy in domestic trade. Remember, under the Webb Act, people who are competitors and are not supposed to be setting prices for the domestic trade are in daily contact. They are constantly exchanging price, cost and supply information. They are continually agreeing to prices for future exports based on what they believe will be future market prices here and abroad. That's at least dangerous territory. If not (as most businessmen who have had experience with Webb associations believe) absolutely lethal ground for fair, competitive pricing.

Still the Antitrust Division has moved dramatically in all the Webb Act years only against the AID gougers. It has respected the Webb-Pomerene exemptions, even if many believe them to be unworkable. The only people who need fear (and, I submit, who have ever feared) the Antitrust Division are those who would *explicitly* (if covertly) use Webb Act functions as an occasion to agree to fix prices and set quotas in the domestic trade. Angels do not fear to tread where a haven is made for the unholy. It is not fear that has kept people away from Webb Act associations, but the fact that they don't find them helpful.

CONCLUSION

I have picked on Senator Danforth's bill because it is the most serious, recent and erroneous reaction to unfavorable foreign trade events. While it is hard to imagine that the Congress will pass the measure or the President would sign it (even though the Commerce Department cartel advocates speak to us as if they have the ear of the President), the bill at best sets our sights away from where they should be. It is frightening that very sound men can be so misled.

> **"Let us not for the sake of some minor hoped-for export trade advantage bring in certain major foreign trade and domestic market disadvantages."**

Because the evidence is so overwhelming, I am emboldened to suggest what is needed. Let us reaffirm our belief in competition by private enterprise. Let's do away with the inherent unfairness of price-fixing; it is an instrument for oppressing all of us and fosters "greed" to our detriment. Let's speak no more about encouraging cartels. If anything, we should be looking to get rid of them. If there be any truth to the need for limited export associations, let the burden shift to those who would seek an exception to antitrust laws to prove they are not anticompetitive. Let us not for the sake of some minor hoped-for export trade advantage bring in certain major foreign trade and domestic market disadvantages. In any event, let us, first, undertake the study the President's Commission urged—before legislating. It makes no sense to put a truck in high gear and our foot on the pedal until we know whether the grade around the curve is steep.

Let us not be beguiled, misled or scared out of our common senses. ■

APPENDIX 7

STATEMENT OF FREDRICK W. HUSZAGH, EXECUTIVE DIRECTOR, DEAN RUSK CENTER, SCHOOL OF LAW, UNIVERSITY OF GEORGIA

I. Preliminary Comments on Trading Company Legislation

In hearings before the Senate Subcommitttee on International Finance last fall, many private and public sector officials testified on trading company legislation. Special attention was given to the unique potential of trading companies to: (1) provide financial services to small and medium manufacturing firms; (2) collect information about potential export markets; (3) reduce risk of creditors supporting export sales, and (4) provide insurance, warehousing and other transportation services. While many public and private sector programs seek to provide individually each of the services, current export figures demonstrate new mechanisms are needed to provide these services on a coordinated basis to small and medium size companies contemplating exports or entry into new export markets. Hearings to date make clear many recognize the need for some form of trading company apparatus and appropriate authorizing legislation. Unfortunately, the record does not expose the important linkages between this legislation and the extensive, ever-increasing activities of state and other non-federal governmental entities concerning international trade. It is essential that the trading company legislation eventually adopted by Congress does not implicitly impair the vitality of these efforts.

Some proposed legislation, including H.R. 7230, contains special provisions for state and local government involvement in trading companies and associated financial services. These provisions, however, go beyond merely safeguarding the evolving, legitimate role of governmental entities cooperating with private sector interests within their jurisdictions. They raise the specter of private sector opportunities being crowded out by public sector interests. Consequently, several witnesses objected to the provisions on principal or because of various philosophical notions about the free market and the paramount role of the private sector in that market. Fortunately, the final version of S. 2718 recognized both the primacy of private sector and the essential role of states in foreign trade. It embodied an explicit finding on the importance of state and other governmental entity involvement in the initiation, promotion and expansion of exports and made clear Congress did not intend to curtail essential experimentation of states and groups of states working with the private sector to facilitate export trade.

There are many constitutional and philosophical reasons supporting congressional deference to the rights of states and other governmental entities to join with the private sector within their jurisdiction to encourage and promote export trade. Persuasive legal, political, and economic arguments also have exposed the value of involvement of two or more states cooperating with private sector interests to promote the exports of goods and services. While the arguments summarized in the appendix to this testimony may not be indisputable, they are substantial and merit a congressional finding such as that now contained in S. 2718. Apart from legal principles, there are equally important, but more subtle reasons for not inhibiting state action concerning trading companies and similar activities.

While trading company legislation may be enacted this term, it will be several years before the activity envisioned in this legislation becomes a significant force in export trade. Given this lag, it is appropriate to consider the utility of state involvement in the trading company environment that will exist then rather than now. While some may believe the environment will be relatively constant, I believe major shifts will take place and are now already in process although perhaps not perceived by the public.

II. Underemphasized Issues Concerning International Trade Policy

Hearings on exports during the last year focused predominantly on individual impediment and incentive programs. While reform of these specific programs is important, activities involving multilateral arrangements are becoming increasingly important and will have a far greater influence on our export trade than domestic incentives and disincentives. The recent multinational trade negotiations resulting in a series of conduct codes are excellent examples of this second and more significant action. Over time they will significantly alter the normal course of present incentive and disincentive programs. The terms of these codes seek directly to change existing domestic programs. More important, the public and private sector's capacity to realize the benefits inherent in such codes will affect our export competiveness far more pervasively than we now imagine possible.

To make matters more complex, there is a third level of activity which is seldom highlighted as affecting export trade but will, in my opinion, be the dominant factor in controlling trade flows. I am referring to fiscal and monetary policies of central governments. Presently, major fiscal and monetary determinations are primarily sensitive to domestic issues. Once these domestic priorities are determined there is rationalization within the broader international context, but major goals of individual programs at Level One and multilateral codes at Level Two are given far less credence than expected. In summary, trading company legislation and the appropriate roles of the states must be evaluated in the context of these three levels of independent activity affecting exports and their change in relative importance over time.

III. Limits on Traditional Structures for Integrating Trade Policy Issues

Appreciation in the abstract of these realitites of interdependent yet insulated layers of policy activity is not adequate. Many collateral issues also need to be taken into account. First, these three levels are conducted within the government by different cells of the permanent bureaucracy. Volumes of testimony in recent years underscore that incentive and disincentive programs are managed by independent bureaucracies which pursue their own goals without adequate coordination with a national export policy.

Careful analysis of the specialized bureaucracies associated with each of the three levels discloses they are not only in competition with one another. Frequently, they are totally oblivious to one another's actions, a condition more dangerous than interagency competition since competition embodies an inherent coordinating feature. Even if these problems are recognised, bureaucratic units seldom have enough resources to cope with competition within a single level as well as integrate activities at the three levels.

There are potential solutions to these problems, but what are the actual prospects for achieving the needed coordination among levels of activity? There are inter-agency task forces composed of high-ranking individuals charged with integrating goals and procedures within and between the three levels of activity. Unfortunately, their experience with complex public administration problems and the substantaive issues is relatively limited when compared with the public administration environments of our competitors such as Japan and Germany. Similarly, congressional committees depend on staff who are dedicated and expert in narrow legislative issues, but frequently not highly experienced as to interrelationships between the three trade policy levels. Since our national ethic does not condone rigorous, specialized education and socialization needed for a professional civil service, the United States realistically cannot eliminate the staffing inelasticities endemic to our federal government.

Large corporate enterprises, a major component of the private sector, are a primary defense against foreign competition. These companies, however, have government relations staff that often parallel federal government structures and maintain a symbiotic relationship with them. Thus, the federal bureaucracy's inability to integrate fully these three activity levels is normally replicated by the private sector. Admittedly, large companies have resources to internally integrate knowledge across these levels and fashion comprehensive strategies that properly reflect these interdependencies, especially when they are rapidly changing. They also can shape aggregate resources of trade associatioins to support these strategies. Many interests, though, question whether such enterprises should be the key mechanism for safeguarding the national interest in terms of the proper balance between specific export programs, national codes of conduct and overbridging fiscal and monetary policies. These interests argue that large companies may use these capacities to secure policies more congruent with multinational corporate needs than the national interest..

IV. An Important, Unforeseen Role of Trading Companies

Trading companies can be a versatile vehicle for bridging the gap between these three levels of government activity. Their dependence on low profit margins necessitates careful calculation of the global consequences of government action at all three levels. Japan's large trading companies, the object of much emulation in the U.S., assess daily developments at all three levels and work closely with government to ensure proper interdependence. We cannot evaluate the utility of trading companies, however, without regard to cultural differences. The private sector's role in Japan differs markedly from that viewed as appropriate in the U.S. Thus, it would be unwise to place excessive dependence on U.S. private trading companies to ensure optimal integration of the three policy levels essential for competitiveness overseas. Fortunately, individual state involvement in various facets of the export process can give political legitimacy to such a dependence.

V. The Utility of State Cooperation with Trading Companies

State legislative and executive branch officials are becoming highly responsive to the needs and preferences of their particular constituencies. When these officials cooperate closely with the private sector, their collective actions have a clear political legitimacy that is routinely reaffirmed by individual citizens. Further, the cultural homogeneity among private and public sector interests in a specific geographic area facilitates a community of interests tuned to functional realities and political imperatives. This special capacity of state government to bind together citizen interests prompted Justice Brandise to recognize state experimentation in foreign commerce as a fundamental aspect of our constitutional form of government. Last year it also caused President Carter to emphasize the national need for individual states to serve as 50 experiment stations in developing innovative approaches to inrternational trade and investment.

While the states are logically positioned to properly merge public and private intrerests concerning a national export policy, there remains the question of state competence to do so. Past staff inadequacies at the state and local levels have encouraged federal usurpation of control of many social, scientific, educational and financial programs. This paternalistic view of state government is merited no longer. Pay scales, recruitment policies and training programs have made states expert in many areas. They are thus an appropriate substitute for federal development of a broad variety of policies and procedures. For example, California is a highly complex, fully integrated economy with a legislature, judiciary and executive department that functions in a highly independent manner on a broad spectrum of economic, political and social issues. They respond creatively to citizen needs, and their initiatives frequently become models for federal action as well as for other states. In the international trade area, California has been a leader among states in shaping a state policy that deals efficiently with trade and human commerce with its neighbors to the South and in the Pacific Basin. At the other side of the country, Georgia, initially under President Carter's leadership and now guided by Governor Busbee, has also taken bold initiatives concerning international trade and seeks federal level reforms that will ensure a coherent export trade policy.

Clearly, California, Georgia, and other states are dedicated to understanding the complex issues inherent in international trade and development and this dedication will increase dramatically due to their growing dependence on exports to stabilize their respective state economies. Thus, they are now assembling the capacity to appreciate the proper linkages between the three levels of federal activity and to recommend effective and practical ways for their integration. Consequently, it can be assumed they will follow the development needs of trading companies with diligency and supplement their efforts to obtain optimal integration of the three levels of federal policymaking affecting export trade.

States should not be precluded from this opportunity to participate closely with trading companies which are in a unique position to deal simultaneously with these three important spheres of policy activity. To preclude such cooperation directly or by implication would be a significant infringement of the states' inherent police powers and encumber development of one of the most vital stimuli for federal reform that is essential to meet the competition growing beyond our borders.

The states do not seek special privileges to intervene in the private market. Rather, they request and deserve an oportunity to help the private sector achieve the overall health, safety and welfare needs of state citizens while remaining the primary moving force behind our supremacy in the world economy. The following finding in any trading company legislation would ensure that states are not hampered in this vital and legitimate endeavor:

> State and local government activities which initiate, facilitate, or expand export of products and services are an important and irreplaceable source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, state and regional economic needs;

[The attachment to Mr. Husangh's statement, "The Multi-State Trading Company: Gauging the Role of the States in Foreign Commerce," by D. Robert Lohn, Rusk Fellow, Dean Rusk Center, is retained in subcommittee files.]

APPENDIX 8

LETTER DATED JUNE 10, 1980, TO HON. JONATHAN B. BINGHAM, FROM LOUIS H. NEVINS, VICE PRESIDENT AND DIRECTOR, NATIONAL ASSOCIATION OF MUTUAL SAVINGS BANKS

NATIONAL ASSOCIATION OF MUTUAL SAVINGS BANKS
NEW YORK, N.Y. 10017

Cable Address:
Savings, New York

WASHINGTON OFFICE
LOUIS H. NEVINS
VICE PRESIDENT AND DIRECTOR
SUITE 200
1700 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20006
TEL. 202: 785-0144

June 10, 1980

The Honorable Jonathan B. Bingham
Chairman
Subcommittee on Economic Policy and Trade
Committee on Foreign Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In connection with the Subcommittee's current consideration of various legislative proposals dealing with export trading companies, the National Association of Mutual Savings Banks would like to express its support for prompt favorable action. The case has clearly been made for the need to improve the ability of American manufacturers and service providers to market their products overseas, and it has been well demonstrated in other countries that export trading companies can facilitate overseas sales. However, a consensus on the question of whether banks should be permitted to participate from an equity standpoint in such endeavors has by no means been as unanimous.

Our Association is strongly of the view that bank entry into this area can be accomplished, with proper safeguards, in a manner which would contribute to the broad public interest. The major reason for this, as has been noted in testimony before your Subcommittee, is that the banking industry through its international offices already has in place an established network to handle export activities.

Mutual savings banks, of which there are 464 institutions with slightly in excess of $160 billion in assets, operate as nonstock corporations primarily engaged in mortgage lending. We do not expect savings banks to be setting up their own wholly-owned export trading companies, but we would like to have the option of participation investments in such companies as may be established by other banks or nonbanking organizations. Mutual savings banks are concentrated in the Northeastern part of the United States where many of our busiest ports are located.

In recent years the diversification of saving bank portfolios into shorter-term investment outlets has become an important aspect of maintaining an overall healthy financial institution. Recognizing this fact, the omnibus banking legislation passed by the Congress and signed into law on March 31, 1980, granted expanded corporate lending authority to federal savings banks. We believe that the export trade authority will prove to be an important complement to the corporate lending power available to mutual savings banks under state and federal law. Such authority is likewise necessary to maintain competitive parity between commercial banks and mutual savings banks.

We, therefore, hope that any legislation approved by the Subcommittee on Economic Policy and Trade will include mutual savings banks as an eligible banking organization for purposes of investing in export trading companies. It may be noted in this regard that such a provision was adopted on the motion of Senator Adlai Stevenson during the Senate Banking Committee's recent action reporting S. 2718.

We appreciate this opportunity to express our views and look forward to working with you in the future progress of this important legislative proposal.

Sincerely yours,

Louis H. Nevins
Vice President and Director

cc: Subcommittee Members

APPENDIX 9

LETTER DATED JUNE 11, 1980, TO HON. JONATHAN B. BINGHAM, FROM JOSEPH H. GISLER, PRESIDENT, PACIFIC AGRICULTURAL COOPERATIVE FOR EXPORT, INC.

PACE

PACIFIC AGRICULTURAL COOPERATIVE FOR EXPORT, INC.

Mailing Address:
465 California Street, Suite 414
San Francisco, California 94104
Telephone: (415) 391-2370

June 11, 1980

Hon. Jonathan B. Bingham, Chairman
Subcommittee on International Economic
Policy and Trade
A707 - House Office Building, Annex 1
U. S. House of Representatives
Washington, D.C. 20515

Re: HR 5061 "Export Promotion and Trade Association Act of 1979" and also:

HR 7436 - S 2718 "Export Trading Company Act and Export Trade Association Act of 1980 and Related Bills"

Dear Chairman Bingham:

Pacific Agricultural Cooperative for Export, Inc. (PACE) is a California cooperative corporation registered with the Federal Trade Commission and qualified as a Webb-Pomerene Association under the Webb-Pomerene Law (sections 61-65 of Title 15 of the United States Code). PACE was established in 1972.

The goal of PACE is to assist and promote the export of the raw or processed agricultural, food, or other products of its members; all PACE activities are directed to this goal.

PACE has been successful in achieving its goals primarily due to its ability to operate as a Webb-Pomerene Association.

We have reviewed the proposed legislation and have the following comments:

1. We wish any legislation affecting Webb-Pomerene to be kept simple even if this means separating it from legislation concerning export trading companies.
2. Any legislation affecting Webb-Pomerene would hopefully Grandfather any Webb-Pomerene Association already existing.

Our reaction is that the legislation proposed does not meet these requirements and this is the reason for our concern.

We would appreciate you keeping us informed as to the progress of the above-mentioned legislation.

Thank you.

Sincerely yours,

Joseph H. Gisler
President

JHG/lsa

PACIFIC AGRICULTURAL COOPERATIVE FOR EXPORT, INC.

APPENDIX 10

LETTER DATED JUNE 11, 1980, TO HON. JONATHAN B. BINGHAM, FROM MICHAEL L. DILLARD, ASSISTANT SECRETARY, CITRUS SHIPPERS UNITED

puregold INC.

June 11, 1980

The Honorable Jonathan B. Bingham
Chairman, Subcommittee on International Economics
and National Policy on Trade
A707 House Office Building, Annex 1
U.S. House of Representatives
Washington, D.C. 20515

Re: Webb-Pomerene Act
Citrus Shippers United

Dear Sir:

It is our understanding that your subcommittee is sponsoring a bill presently before both the Senate and House of Representatives that will modify the existing Webb-Pomerene Act.

While we are not particularly concerned about the changes that were originally introduced, we are concerned about the latest move to combine those changes with another bill dealing with the regulations for setting up Export Trading Companies.

We feel that by combining Export Trading Companies under the protection of the Webb-Pomerene Act will only serve to make a very simple law into a very complicated process that will no doubt effect us an an existing Webb-Pomerene company.

The existing Webb-Pomerene Act is very simple to operate under. In this day and age, when everyone admits that Government regulations have become very complicated, we would hope that you and your committee will consider this in your deliberations and recommendations and keep the two bills separated.

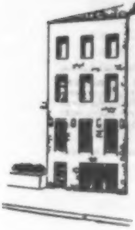
Very truly yours,

Michael L. Dillard
Assistant Secretary
CITRUS SHIPPERS UNITED

MLD:ie

APPENDIX 11

LETTER DATED JUNE 19, 1980, TO HON. JONATHAN B. BINGHAM, FROM HERBERT LIEBENSON, PRESIDENT, NATIONAL SMALL BUSINESS ASSOCIATION



NATIONAL SMALL BUSINESS ASSOCIATION THE VOICE OF SMALL BUSINESS
NSB Building • 1604 K Street, N.W.
Washington, D.C. 20006 • Telephone (202) 296-7400

N S B
FOUNDED 1937

June 19, 1980

Hon. Jonathan B. Bingham
Committee on Foreign Affairs
2262 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Bingham:

International trade is a new frontier to many smaller firms and the Export Trading Company Act of 1980 offers small and medium-sized firms an important opportunity to further develop our trade role in new and exciting ways. This bill represents a significant first step in a series of initiatives to help solve some of our economic problems.

Small business is increasingly aware and informed on Congress' efforts to provide much needed support. With proper cooperation from all levels of government we realize we can continue our essential economic role of job creation, high levels of innovation and help stop America's productivity slide. Small business needs your help to continue its vital growth.

We support export trading legislation such as was reported out of the Senate Banking Committee and marked up by the House Subcommittee on International Economic Policy and Trade.

I hope our association can count on your support for many members have expressed interest in this bill as it complements many of the White House Conference on Small Business recommendations.

May I thank you in advance for your favorable consideration of the Export Trading Company Act.

Sincerely,

Herbert Liebenson

Herbert Liebenson
President

HL/mm

APPENDIX 12

LETTER DATED JUNE 30, 1980, TO HON. JONATHAN B. BINGHAM, FROM HOWARD W. FOGT, JR.

FOLEY, LARDNER, HOLLABAUGH & JACOBS
1775 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006
TELEPHONE (202) 862-5300

IN MILWAUKEE, WISCONSIN
FOLEY & LARDNER
FIRST WISCONSIN CENTER
777 EAST WISCONSIN AVENUE
MILWAUKEE, WIS. 53202
TELEPHONE (414) 271-2400
TELEX 26-819
(FOLEY LARD MIL)

IN MADISON, WISCONSIN
FOLEY & LARDNER
POST OFFICE BOX 1497
FIRST WISCONSIN PLAZA
1 SOUTH PINCKNEY STREET
MADISON, WIS. 53701
TELEPHONE (608) 257-5035

June 30, 1980

Honorable Jonathan B. Bingham
2262 Rayburn House Office Building
Washington, D.C. 20515

Re: H.R. 7230 and S.2178 and Related Legislation: Export Trade Act of 1980

Dear Congressman Bingham:

As counsel for the Phosphate Rock Export Association (Phosrock), we are enclosing the Association's comments with respect to the Export Trade Act of 1980 now pending before your Committee. Phosrock supports legislation designed to stimulate export activity and to clarify the legal standards for joint action among American companies in the export market. The Subcommittee on International Economic Policy and Trade is to be commended for its action on H.R. 7230. For ten years, the Association has pursued foreign markets on behalf of its members. Its experience during this period suggests the continued importance of U.S. government action to support efforts of American firms to expand export trade and to reduce the nation's persistent trade deficit.

In the view of the Association, the Committee should consider three principal areas of concern. First, the legislation should provide clearcut standards for permissible joint action by U.S. exporters. As all who have studied this issue have recognized, uncertainty as to the legality of cooperative activity in the export market, coupled with hostility to the Webb-Pomerene Act by the Antitrust Division of the Department of Justice, has deterred greater utilization of the Webb-Pomerene Act.

Second, if a certification procedure is to be adopted, the Department of Commerce must employ clear and definitive standards in processing applications, according automatic certification under appropriate circumstances. In passing the Webb-Pomerene Act in 1918, Congress was responding to the prevailing view that American firms required an antitrust exemption to permit them to compete effectively with foreign cartels and to sell to buying-entities that were owned, sponsored or supported by foreign sovereigns. The same condition exists today for many associations, like Phosrock, that compete against and deal with foreign governments.

Finally, the Association urges that the legislation permit existing Webb-Pomerene Associations to continue their operations without having to undergo an unsettling certification process. These associations presumably have conducted their operations in compliance with the substantive provisions of the Webb-Pomerene Act which are intended to remain unchanged in the new legislation. To require them nevertheless to justify their continued existence through a certification process would disrupt their operations and jeopardize important customer relations thus hindering their efforts to compete against foreign rivals. Legislation designed to foster export trade ought not threaten the operations of organizations that have been promoting trade expansion for years.

Sincerely yours,

Howard W. Fogt Jr.

Howard W. Fogt, Jr.

Enc.

COMMENTS OF THE PHOSPHATE ROCK EXPORT ASSOCIATION ON THE EXPORT TRADING COMPANY ACT OF 1980

The purpose of the Export Trading Company Act of 1980 (the "Act") is to improve the performance of the United States in international commerce. Title II of the Act is designed to promote the formation of companies and associations to perform export services for American producers and suppliers, linking potential U.S. exporters with overseas markets and expanding U.S. export trade. Like the Webb-Pomerene Act that it would replace, Title II recognizes that the ability of American firms to compete successfully with their foreign rivals will be enhanced if they can engage in cooperative export activities without fear of antitrust prosecution. Thus, like the Webb-Pomerene Act, Title II provides an exemption from the antitrust laws for certain export trade activities.

The Webb-Pomerene has not been widely utilized by American companies as a result of its failure to clearly delineate permissible joint conduct. */ Title II is intended to cure this

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*/ The Committee on Banking, Housing, and Urban Affairs of the U.S. Senate in its Report recommending passage of S.2718 stated:

> The reasons for this poor showing are many . . . (P)erhaps most important, the Department of Justice, and to a lesser extent the Federal Trade Commission, have been perceived by the business community, as exhibiting a thinly veiled hostility toward Webb-Pomerene associations. The vagueness of the Webb-Pomerene Act leaves uncertain what activities will constitute a substantial restraint of domestic trade. As a result, the threat of antitrust litigation has served as a deterrent to broader utilization of the Webb-Pomerene Act. S. Rept. 96-735 at p. 14.

vagueness problem by clarifying the scope of the antitrust exemption. In addition, Title II changes the Webb-Pomerene Act by transferring oversight of exempted companies and associations from the Federal Trade Commission to the Department of Commerce. It also departs from the Webb-Pomerene Act by making antitrust immunity contingent upon a certification procedure with issuance of a certificate only upon the demonstration of a specific need for joint activity.*/

As an export trade association established under the Webb-Pomerene Act, Phosphate Rock Export Association supports passage of legislation designed to improve the status of the U.S. as a world trader. At the same time, the Association stresses the importance of going beyond giving lip service to the task of clarifying the antitrust provisions applicable to export trade activities. Unless American businesses are provided meaningful guidelines in this regard, Title II is likely to fail as an incentive for increased export activity. Also, with respect to the certification procedure that would enable export trading companies and export trade associations to receive antitrust clearance for specified export trade activities, the Association suggests that companies engaged in certain export situations should automatically qualify for certificates.

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*/ Title II also makes the provisions of the Webb-Pomerene Act explicitly applicable to the exportation of services, and provides procedures for the Justice Department and the FTC to advise the Department of Commerce during the certification process and to seek invalidation of any certification that fails to conform to the substantive standards of the Act.

Congress Should Provide Concrete Examples of Legally Permissible Conduct in Export Trade.

In delineating the scope of the antitrust exemption, there should be left no room for doubt that firms may engage legally in all those activities customarily associated with commercial export transactions. The most obvious of such activities, of course, are the setting of sales prices and the allocation of orders among cooperating member-suppliers.*/

The landmark Durex Abrasives decision**/ catalogued a number of functions common to joint export trade associations:

- recruitment for membership of all interested companies in an industry;
- establishment of quotas among members to guage their participation;
- use of the association and its agents as the members exclusive foreign outlet;

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*/ Both export price fixing and customer allocation were cited as examples of exempted export trade association activity in a 1976 advisory opinion that stated as follows:

> The 1918 Webb-Pomerene Act authorized American exporters to engage collectively in foreign trade through cooperatively organized trade associations . . . . The statute qualifiedly exempts such associations from the antitrust laws in joint foreign trade ventures. For example, they may fix export prices and quotas, pool products for shipment, and establish terms and conditions of sale to foreign markets.
>
> FTC, Advisory Opinion Digest No. 91 (September 21, 1966).

**/ United States v. Minnesota Mining & Mfg. Co., Inc., 92 F. Supp. 965 (D. Mass. 1950).

- determination of the amount and the price of the members product to be sold through the association; and
- refusal to handle products of non-member competitors. */

According to Judge Wyzanski, the foregoing practices are the "normal features of any joint enterprise"; they are

> usually so essential to its stability and to preventing its members from taking individual selfish advantage of the knowledge and opportunities that have come to them as a group that, absent special circumstances revealing their unfairness or oppressive character in a particular setting, they are not outside the license granted by the Webb-Pomerene Act.

Since Title II is intended to codify court interpretations of the Webb-Pomerene exemption to domestic antitrust law,**/ the models provided in the Durex Abrasives case serve well as specific examples of clearly legal conduct in the pursuit of export trade.

At the same time that there must be clear and specific examples of what constitutes permissible joint export activity, export trading companies and other associations should be left the discretion to select those kinds of permissible joint conduct that will best serve the particular needs of their members and the industry. The Webb-Pomerene Act has permitted export trade associations to operate with flexibility and through the years Webb-Pomerene associations have varied widely. Some have acted as full-functioning agents for their members; others merely have carried out limited, specially designed responsibilities.*/ Title II does not -- and it should not -- change the exemption's applicability to export trade arrangements designed to accomplish a variety of purposes.

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*/ Membership in an association, nevertheless, should be available to all eligible producers in the industry.

**/ S. Rept. 96-735 at p. 16.

Certain Competitive Circumstances Should Invoke Automatic Certification Under Title II.

Title II requires that before an association or company can obtain certification under the Act, the Secretary of Commerce must find that the export activities to be certified will serve a specified need in promoting export trade. While the establishment of a justification for an antitrust exemption will vary from industry to industry, it is worth reemphasizing

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*/ In its 1978 staff analysis, the FTC identified numerous functions performed by existing associations, including:

- Exports in name of association
- Sales agent from offices within the U.S. or through foreign sales agents
- Cooperative bids or negotiation of sales with foreign governments/international organizations
- Sales to U.S. for delivery outside the U.S.
- Freight consolidation/rate negotiation/ship chartering
- Foreign construction, assembly or processing facilities
- Engineering or licensing services
- Foreign storage or distribution facilities
- Market research; analysis of export markets
- Statistical services
- Credit information and collection facilities
- Uniform rules, terms of sale or contracts
- Allocating business among members
- Setting prices
- Monitoring U.S. legislation and regulatory activities
- Monitoring foreign legislation and regulation

the continued validity of the premises on which Congress based enactment of the Webb-Pomerene Act in 1918.

The FTC recommended a statutory exemption for certain joint export trade activities in order to enable United States companies to compete against foreign cartels and deal effectively with government-owned, controlled or supported foreign customers. After an extensive two-year study, the FTC had concluded that:

> In seeking business abroad, American producers must meet aggressive competition from powerful foreign combination . . . . In various markets American manufacturers and producers must deal with highly effective combinations of foreign buyers . . . . These combinations naturally make individual American producers bid against each other . . . . If Americans are to enter markets of the world on more equal terms with their organized competitors and their organized customers, and if small American producers and manufacturers are to engage in export trade on profitable terms, they must be free to unite their efforts.*/

The keynote of the Webb-Pomerene Act, thus, lay in its permitting a cooperative effort by American competitors in the pursuit of their common goal of winning foreign customers from foreign rivals. Congress recognized the advantages of united activity that could reduce the costs of exportation, increase the export market shares of American firms, and--if joint activity should result in higher returns from foreign sales--foster the health of the American economy.

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*/ FTC Report on Cooperation in American Export Trade (1916). Cooperation among domestic producers, the FTC suggested, is imperative:

> To avoid needless expense in distribution, to meet formidable foreign buying organizations, to insure reasonable export prices and to prevent the profitless exhaustion of our national resources . . .

American companies continue today to face vigorous competition from foreign cartels and the problem of dealing with government-owned, controlled or supported foreign suppliers and customers. This Association, in its involvement in trade in phosphate rock, has firsthand knowledge of this reality. Phosphate rock is a mined raw material used in various phosphorous derivative industries, particularly in the manufacture of complex phosphatic fertilizers. Generally speaking, it is a fungible commodity, the principal varient being the content or extent of the fertilizing element (P205). Known phosphate rock deposits are scattered throughout the world, but are principally located in Morocco, Algeria, Tunisia, Spanish Sahara, Jordan, Israel, Togo, Senegal, South Africa, certain South Pacific islands, the Soviet Union and the United States.

Virtually all phosphate rock miners in the world other than those operating in the United States are government-owned or controlled, including the following:

Algeria
Australia
Brazil
China
Egypt
Israel
Jordan
Mexico
Morocco
Ocean Islands
Senegal
Syria
Tunisia
U.S.S.R.
Vietnam

Government ownership and control inevitably results in the strong political and financial support on the part of the governments. Morocco, for example, derives over one-third of its gross national product from the export sale or phosphate rock.

Further, many actual and potential phosphate rock customers are foreign governments or they are companies that are totally or substantially owned or controlled by their governments. Included in this number are customers in the following countries:

Australia
Austria
Bangladesh
Brazil (certain customers)
Bulgaria
China
Colombia
Costa Rica
Czechoslovakia
Ecuador
El Salvador
Finland
France (certain customers)
India
Indonesia
Italy
Korea
Mexico
Pakistan
Philippines
Poland
Portugal
Romania
Sri Lanka
Taiwan
Venezuela

The potential problems of dealing with foreign sovereigns as competitors or customers are enormous. Recently, for example, India advised individually its American suppliers, who did not belong to a Webb-Pomerene association, that it would not honor any of its contracts with them nor deal with them in the future until these suppliers amended their contracts by changing the price to a stipulated figure. Because the American firms could not take joint action to defend against such pressure tactics, India was able to pit one supplier against another. Once the resistance of one supplier was broken, all the remaining American firms fell into line in order to avoid losing substantial tonnage.

The result was the loss of millions of dollars of export revenue.

Even when an export customer is privately owned, it frequently has a longstanding relationship of support and cooperation with its government, as in the case of Japan. Moreover, the government may exercise leverage to influence selection of a supplier in order to foster some other national interest. France, for example, has repeatedly urged the few remaining privately-owned French fertilizer companies to favor Morocco as a supplier in order to satisfy certain bilateral commitments between those two countries. When American companies must compete under such circumstances, certification under the Export Trade Act should be automatic. If American firms are to deal on an equal basis with their foreign rivals and export customers, these companies need the protection for joint action provided by the limited antitrust immunity contained in the Act.

CONGRESS SHOULD MAKE CLEAR THAT ALL EXISTING ASSOCIATIONS MAY CONTINUE TO OPERATE UNDER THE NEW ACT

During consideration of this legislation by committees in both the House of Representatives and the Senate, concern has been expressed repeatedly that any export trade legislation contain a provision to assure that all existing Webb-Pomerene associations continue their operations unimpeded. Nevertheless, none of the proposals so far have dealt directly with this important question and statements of administration enforcement officials are equivocal. This issue must be resolved if the contribution made by Webb-Pomerene associations to U.S. export trade is to continue or increase.

Because existing associations have complied with the provisions of the Webb-Pomerene Act that are to continue unchanged by the new legislation, requiring these associations to justify their continued existence through a certification process would be inappropriate and unnecessary. Phosrock was formed in 1970 when it registered with the Federal Trade Commission as required by Section 5 of the Webb-Pomerene Act. Membership is open to any person engaged in the United States in mining phosphate rock. At the present time there are seven members of the Association:

Agrico Chemical Company
American Cyanamid Company
Borden Chemical Company
Freeport Phosphate Rock Company
International Minerals & Chemicals
  Corporation
Occidental Chemical International, Inc.
W. R. Grace & Co.

Under its membership agreement and operating policies, every reasonable effort has been taken to avoid the occurrence of prohibited domestic effects as a result of Phosrock's export activity.

The purpose of Phosrock was and is to expand the export trade and commerce in phosphate rock by assisting the Phosphate Rock export activities of its members. Phosrock has engaged in all aspects of export sales activity in phosphate rock as a non-exclusive agent of its members. Its responsibilities include market research and analysis, technical assistance, solicitation, negotiation and conclusion of export sales contracts, traffic coordination, invoicing, order processing and collection and distribution of the proceeds of sale. Phosrock is headquartered in Tampa, Florida and has representative offices in Paris, France; Sao Paulo, Brazil; and Tokyo, Japan.

During its 10 years of operation, Phosrock has built an effective staff of experts who devote their full time and attention to the export sale of phosphate rock. It has developed a reputation among its customers as a responsible and resourceful supplier of phosphate rock. It has opened new markets for American phosphate rock and has retained existing customers by making its product more competitive. In short, it has and will continue to make a valuable contribution to expanding U.S. export trade of phosphate rock. To require the Association to apply for certification unnecessarily risks the disruption of relations with export customers to the benefit of Phosrock's foreign competitors. Legislation designed to foster export trade ought not threaten the operation of organizations, like Phosrock, that have been promoting trade expansion for years.

To resolve these risks and uncertainties, Phosrock proposes the following amendment to Section 8 of Title II:

Sec. 8. AUTOMATIC CERTIFICATION FOR EXISTING ASSOCIATIONS

> All export trade associations which are registered with the Federal Trade Commission as provided in the Webb-Pomerene Act shall be automatically certified on the date of enactment of this Act, for all joint export trade

> activity included in Annual Report filed with the Federal Trade Commission for the year immediately preceding the enactment of this Act. The files of all such existing associations shall be transferred forthwith by the Commission to the Secretary, and administrative responsibility in respect of any pending matters regarding any such existing associations shall vest in the Secretary as of the date of enactment of this Act. */

This change in the legislation will eliminate the counterproductive risks associated with the certification process and will provide a responsible procedure for the continued administration of export trade associations.

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*/ If Section 8 of S.2718, as reported by the Subcommittee, continues to include subsection a, the amendment Phosrock proposes would become subsection b.

○